

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-1373

**United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,

Appellee,

-against-

SALVATORE MOGAVERO,

Appellant.

*On Appeal From the United States District
Court for the Eastern District of New York*

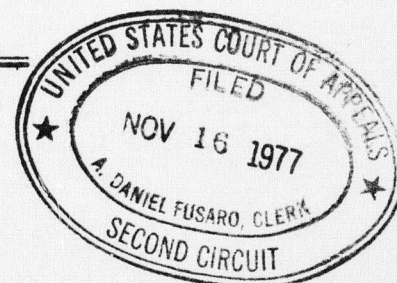
APPELLANT'S APPENDIX

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA,
Plaintiff,

-against-

SALVATORE MOGAVERO,
Defendant.

- - - - - x

PERTINENT DOCKET ENTRIES

- May 9, 1977 -- Letter to Mishler, J. from Barry Kinsley
- May 13, 1977 -- Appointment of Counsel, Barry Kinsley
- May 13, 1977 -- Letter to Stephen Mahler, Esq. by
Mishler, J. dated May 13, 1977
- Notice of Appearance - Def. Mogavero filed
- Indictment as to Def. Salvatore Mogavero filed
- Certificate of Engagement setting case for trial
June 20, 1977
- Demand for Notice of Alibi by U.S. Attorney
- Copy of letter on file by AUSA, Rhonda Fields to
defendant's attorney, Frank Geoly.
- Order of Sustenance by Mishler, J., dated June 23, 1977.
- Order of Sustenance by Mishler, J., dated June 24, 1977.
- Gx initial request to charge.
- Def. Request to Charge
- Gx supplemental requests to charge
- Letter to Jeffrey A. Rabin, Esq., by Mishler, J. dated
July 7, 1977.
- Judgment and commitment order dated Aug. 19, 1977
- Notice of Appeal dated August 19, 1977.

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

A 01

3 -----X
4 UNITED STATES OF AMERICA

5 -against-

77 CR 129

6 SALVATORE MOCVERO,

7 Defendant.

8 -----Y
9
10 UNITED STATES COURTHOUSE
11 Brooklyn, New York
12 June 22, 1977
13 10:00 A.M.

14 B E F O R E:

15
16 HONORABLE JACOB MISHLER, U.S.D.J.,
17 CHIEF JUDGE

18
19 HARRY RAPAPORT
20 Acting Official Court Reporter
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A P P E A R A N C E S:

DAVID G. TRAGER, ESQ.,
U.S. Attorney,
for the Eastern District of New York

BY: RHONDA FIELDS, ESQ.,
Assistant U.S. Attorney
for the Government.

FRANK POLY, ESQ.,
For the Defendant.

MORNING SESSION

(Whereupon a jury of twelve plus alternate jurors were duly selected and sworn on Tuesday, June 21, 1977.)

(The jury enters the courtroom.)

THE COURT: I am terribly sorry I am delayed. I have another trial and the jury is deliberating and I had to give them my attention this morning. They came in at 9:30 and it took this long. And it may be that during the trial I will have to suspend to give them my attention.

I'm sorry it happens. We have to schedule these things, but it doesn't always work out.

I think we are ready now.

MS. FIELDS: Good morning.

(Ms. Fields makes an opening statement to the jury on behalf of the United States of America as follows:)

May it please the Court, counsel, ladies and gentlemen of the jury:

My name is Rhonda Fields and I am an Assistant United States Attorney in this district. It will be my duty throughout this trial to present the Government's case.

1
2 The gentleman with me at counsel table with
3 me throughout the trial is Mr. Edward Maher who
4 will be assisting me at the trial.

5 As Judge Mishler has explained, at this
6 point in the trial counsel have an opportunity to
7 make what is called an opening statement. This
8 statement is not evidence. The purpose of this
9 statement is to give you an overview or an outline
10 of the evidence which will be presented during
11 the trial.

12 The defendant Salvatore Mogavero has been
13 charged with conspiring to sell methaqualone
14 tablets, a controlled substance, and with possession
15 of methaqualones with intent to sell them.

16 The first count of the indictment charges,
17 and the Government will prove beyond a reasonable
18 doubt, that Salvatore Mogavero knowingly and
19 intentionally conspired with Peter D'Agostino,
20 Frederick Moskowitz and others to distribute and
21 possess with intent to distribute methaqualone
22 tablets. This conspiracy ran from approximately
23 September, 1976 to February 1977, and it involved
24 four transactions.

25 The second count of the indictment charges,

1
2 and the Government will prove beyond a reasonable
3 doubt, that on or about November 4, 1976, the
4 defendant Salvatore Mogavero along with Peter
5 D'Agostino, Frederick Moskowitz and others know-
6 ingly and intentionally possessed a quantity of
7 methaqualones with intent to distribute them.

8 The evidence will show that the defendant
9 Salvatore Mogavero was part of a distribution
10 chain for the sale of methaqualone tablets, which
11 are commonly called qualudes.

12 The evidence will show that one Frederick
13 Moskowitz at the lowest level of the chain had
14 most frequent contact with and sold small quan-
15 tities of qualudes to the customer, and undercover
16 DEA Agent Paul Sennett. Peter D'Agostino was
17 Mr. Moskowitz' source and partner. When larger
18 quantity sales of qualudes were to be made to
19 Agent Sennett and more money was involved, Peter
20 D'Agostino became involved in directing and
21 overseeing the sales. Finally, the defendant
22 Mogavero was the largest supplier who only surfaced
23 on November 4, 1976.

24 The evidence will show a large quantity of
25 qualudes, 50,000 pills were to be sold.

1
2 Thus, you will hear testimony that in
3 September of 1976 Undercover Agent Sennett first
4 met with Frederick Moskowitz. He was introduced
5 to Moskowitz, you will learn, through an indi-
6 vidual named Irwin Bell.

7 In September he purchased approximately
8 1,000 methaqualone tablets from Moskowitz in a
9 White Castle parking lot. Approximately two weeks
10 later, in September, the agent met with Moskowitz
11 again and purchased another approximate 1,000
12 methaqualone tablets from Moskowitz.

13 Following these two sales an arrangement
14 was made to purchase a larger quantity of tablets,
15 50,000.

16 On November 4, 1976, Agent Sennett met with
17 Moskowitz and went to a location in Brooklyn, a
18 Carvel store, and you will learn for the first
19 time he met Peter D'Agostino, who was there
20 orchestrating the transaction and not handling
21 the pills.

22 Finally you will learn the supplier of the
23 pills arrived in the parking lot. And this, the
24 evidence will show was the defendant Salvatore
25 Moravoski.

1
2 You will further learn the sale was not
3 completed on this date because the defendant,
4 fearful of apprehension, cut off the transaction
5 and left before the methaqualones could be examined.
6 Although the tablets were not seized, the evidence
7 will show beyond a reasonable doubt that Salvatore
8 Mogavero at that time and at that place had
9 qualudes in the trunk of his car and had them for
10 the purpose of selling them to Paul Sennett.

11 You will also hear testimony concerning
12 the final transaction which was a part of this
13 conspiracy, an attempted sale of qualudes in
14 February, 1977, which was carried out by Frederick
15 Moskowitz at the direction of Peter D'Agostino.
16 Thus, the evidence will show beyond a reasonable
17 doubt that Salvatore Mogavero conspired with
18 Frederick Moskowitz, Peter D'Agostino, and others,
19 to sell methaqualone tablets, and that on November
20 4, 1976, Salvatore Mogavero possessed a quantity
21 of methaqualone tablets for the purpose of selling
22 those tablets to Undercover Agent Paul Sennett.

23 After the evidence in this case is presented,
24 both I and Mr. Geoly will have an opportunity to
25 address you concerning the evidence which you will

1 have heard during the trial. Until that time,
2 the Government only asks that you keep an open
3 mind, that you listen closely to the witnesses
4 and observe them as they sit on the witness stand
5 so that at the close of this trial you can carry
6 out your function as impartial judges of the facts
7 presented here before you.
8

9 Thank you very much for your attention.

10 THE COURT: Mr. Geoly.

11 (Mr. Geoly makes an opening statement to
12 the jury on behalf of the defendant Salvatore
13 Mogavero as follows:)

14 MR. GEOLY: Your Honor, Ms. Fields and Madam
15 Foreman and ladies and gentlemen of the jury:

16 You have heard what the Government intends
17 to prove. And the only ones who will determine
18 whether they have proved it beyond a reasonable
19 doubt are you, not the Government.

20 Now, what she has stated here, they are going
21 to try to prove that my client is some sort of
22 upper echelon drug dealer.

23 Well, Mr. Mogavero will take the stand in
24 this case, open himself up to you, any question
25 that the Court, the U.S. Attorney can ask him.

1
2 You will judge this man. You will determine
3 if this is the type of man, after you hear about
4 his background, could possibly be the person that
5 they are talking about.

6 You will find out that he is married, has
7 three children, never been arrested, never been
8 convicted, worked at one job for nine or ten years.
9 And you will have to decide whether it's a mistake.

10 Mr. Mogavero will tell you that on November
11 4th he was not at the Carvel shop, that it was
12 not him.

13 There will be testimony here -- because we
14 have seen some of the exhibits, that the agents
15 will identify a particular car which is traceable
16 to Mr. Mogavero's wife.

17 It is our intention that because the car
18 may have been used, the identification of him
19 comes about.

20 You have heard in the opening Moskowitz,
21 Moskowitz, D'Agostino, Moskowitz. They are not
22 on trial here. Mr. Mogavero is. Listen to the
23 evidence against him.

24 The brief opportunity of the observation of
25 the person that they will say is Mogavero, taken

1
2 into conjunction with his testimony, I am sure
3 at the end of the case you will decide him not
4 guilty.

5 Please keep your minds open and listen to
6 all the evidence. I know it's hard when you
7 hear drugs. We instinctively turn off. If I
8 can beg of you at this time to listen to the evidence,
9 wait until you hear what Mr. Mogavero says, how he
10 says it, who he is, and then make your decision.

11 I thank you.

12 THE COURT: Will you please call your first
13 witness, please.

14 MS. FIELDS: Yes.

15 Paul Sennett.

16 THE CLERK: Raise your right hand, please.

17 P A U L S E N N E T T, called as a witness by
18 the Government, having been first duly sworn by
19 the Clerk of the Court, was examined and testified
20 as follows:

21 THE CLERK: State your name and spell it
22 for the record.

23 THE WITNESS: Paul Sennett, S-e-n-n-e-t-t.

24 DIRECT EXAMINATION

25 BY MS. FIELDS:

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Q How are you employed, Mr. Sennett?

A A special agent with the Drug Enforcement Administration.

Q And how long have you been so employed?

A Since June of 1972.

Q And were you so employed in September of 1976?

A Yes, I was.

Q And in what capacity were you employed at that time?

A I was an undercover agent at that time.

Q Would you speak up just a little.

A Yes.

I was an undercover agent, in an undercover capacity.

Q Do you know an individual named Irwin Bell?

A Yes.

Q And approximately when did you first meet Mr. Bell?

A At September 1st, at the Chateau Henry I restaurant on East 64th Street in Manhattan.

Q And can you tell us what occurred at this time?

A Mr. Bell at this time told me he knew an

1 individual in Queens by the name of Freddie who had
2 approximately 5,000 qualudes.
3

4 MR. GEOLY: I will object at this time.

5 May we have a bench conference?

6 THE COURT: No.

7 You don't need a bench conference. I will
8 charge the jury that the defendant is not normally
9 chargeable with any conversations between the
10 witness and anyone else and certainly conversations
11 not in his presence. A defendant is only charge-
12 able with acts or statements he, himself, makes.
13 So Mr. Mogavero is not chargeable with this
14 conversation, with an exception. The defendant
15 is charged together with Irwin Bell, Frederick
16 Moskowitz, Richard Capone, Peter D'Agostino and
17 others with dealing in qualudes during December,
18 1976, I believe, and February, 1977.

19 Now, if the Government establishes the
20 conspiracy, then each conspirator becomes the
21 agent of every other individual who you find
22 beyond a reasonable doubt knowingly and wilfully
23 entered into the conspiracy.

24 If the conversation or the acts are within
25 the scope of the conspiracy, and during the term

1 of the conspiracy, in other words, just like in
2 a legitimate partnership, if people are in
3 business each partner is bound by what the other
4 partner says or does, if it's for the business,
5 to advance the purpose of the business and during
6 the term of the partnership.
7

8 So if the Government proves that the con-
9 spiracy alleged in the indictment existed for
10 the purposes stated and the purposes alleged in
11 this indictment is to deal in qualudes, and if
12 the Government proves that Irwin Bell was a
13 member of the conspiracy, then if you find the
14 Government has proved that the defendant Salvatore
15 Mogavero was also a member of the conspiracy,
16 then whatever Irwin Bell said or did during the
17 term of the conspiracy, and to advance the
18 purposes of the conspiracy dealing in qualudes,
19 is binding on the accused. Unless the Government
20 proves all that, then it's not binding.

21 Any objection to that?

22 MR. GEOLY: No objection to that, your Honor.

23 THE COURT: You may proceed.

24 BY MS. FIELDS:

25 Q Now, can you tell us what occurred during

1 this meeting. Mr. Sennett?

2 A I met with Irwin Bell at the Chateau Henry --

3 THE COURT: You have to speak louder. I'm
4 having trouble hearing you.

5 THE WITNESS: Yes.

6 A (Continued.) I met with Irwin Bell at the
7 Chateau Henry IV restaurant in Manhattan. Mr. Bell told
8 me that he knew an individual in Queens by the name of
9 Freddie that had 5,000 qualudes that he would be willing
10 to sell. He made a phone call at this time.

11 I then went out to the intersection of Bell
12 Boulevard and Northern Boulevard in Queens, to the
13 White Castle parking lot.

14 Q And what occurred at that time?

15 A I got out of my car and I went to the
16 parking lot and I was hailed by two individuals. One
17 of them passing in the car was Henry Moskowitz.

18 Q Did you have a conversation with this
19 individual?

20 A Yes, I did.

21 Q And what was said to you and what did you say?

22 A I told him I felt very uneasy about the way
23 the deal was to go down. And I told him I would like
24 to postpone it until the following day.
25

1 At this time I gave them my telephone number at
2 the New York regional office undercover phone.

3 Q And did there come a time you had further
4 contact with this individual?

5 A Yes, the following day.

6 Q And what occurred?

7 A Freddie Moskowitz called and told me he had
8 1,000 qualudes at this time for \$2,000. And I made
9 arrangements to meet him that day at the White Castle
10 parking lot.

11 Q Did you go to the White Castle parking lot?

12 A Yes.

13 Q And what occurred when you arrived there?

14 A When I drove into the parking lot Freddie
15 came up to me and said, "Was everything okay? Do you
16 have the money?"

17 And I said, "Everything is okay. I have the money."

18 And he said, "Everything is okay. I'll be back
19 in about 15 or 20 minutes."

20 And then he walked out of the area.

21 Q Then what occurred?

22 A About 15 or 20 minutes later he came back
23 with a green bag and handed me 1,000 qualudes and I
24 handed him \$2,000.
25

1
2 Q And what occurred following this?

3 A I took the qualudes back to the New York
4 regional office and I put them in the vault, processed
5 them, sealed them and put them in the vault for overnight
6 safekeeping.

7 MS. FIELDS: This is Government's Exhibit 1
8 for identification.

9 THE CLERK: Substance in a plastic bag
10 marked Government's Exhibit 1 for identification.

11 Q Mr. Sennett, I show you what has been marked
12 as Government's Exhibit 1.

13 (Handed to the witness.)

14 Q Can you tell us whether or not you recognize
15 Exhibit 1?

16 A Yes, I do.

17 Q And how do you recognize it?

18 A I initialled it.

19 Q Do your initials appear upon that exhibit?

20 A Yes, they do.

21 Q Can you tell us what Government's Exhibit 1
22 is, please.

23 A Approximately 1,000 qualudes.

24 Q Can you tell us what they are?

25 A Qualudes?

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Q Yes.

A It's methaqualone is the chemical name for the pills.

Q Can you tell us when was the first time you saw Exhibit number 1?

A When I bought them from Fred Moskowitz.

Q On what date?

A September 2nd.

MS. FIELDS: At this time the Government would ask that Exhibit 1 be moved into evidence.

MR. GEOLY: I object, your Honor.

THE COURT: On the same grounds indicated?

MR. GEOLY: Yes, your Honor.

THE COURT: Of course, the Exhibit has nothing to do with this defendant, unless and until the Government establishes that there was a conspiracy as set forth in the indictment, that Irwin Bell was a member of the conspiracy; and then when the Government proves that beyond a reasonable doubt Salvatore Magavero was a member of that conspiracy. And the Government must show that this transaction was part of the conspiracy and that the transaction was to further the purpose in the conspiracy in effect to deal in

1
2 qualudes.

3 If the Government doesn't prove all this,
4 disregard the evidence. In other words, you set
5 this evidence in your mind and see if the
6 connecting evidence comes in. If not, you dis-
7 regard it.

8 Any objection to that?

9 All right, it may be marked. But I direct
10 the Government's attention to the sticker on it.
11 That's not part of the exhibit and that must be
12 removed.

13 THE CLERK: Government's Exhibit 1, pre-
14 viously marked for identification, is now marked
15 in evidence.

16 Q Now, following this first transaction,
17 would you tell us whether or not you had any further
18 contact with Freddie?

19 A Yes, I did.

20 Q Approximately when was that?

21 A September 15th.

22 Q And what occurred?

23 A He called me at the undercover telephone
24 and told me he had 2,500 tablets for sale and they would
25 be \$1.90 a pill.

1 And I said okay, I would be interested in
2 purchasing it at this time.
3

4 And he told me to go out right to the White
5 Castle parking lot on Bell Boulevard and Northern
6 Boulevard and we would do the deals.

7 Q Did you go as he directed?

8 A Yes, I did.

9 Q What occurred when you got there?

10 A When I got to the parking lot he said that
11 we were going to go to the Bayside shopping mall, which
12 was a few blocks away.

13 And at this time we drove over to the -- I
14 followed him over to the shopping mall. He got out and
15 made a phone call. He told me the pills were in an
16 apartment, the Versailles, I believe on 209th Street.
17 He told me the pills were in a girl's apartment and we
18 would have to go over there to do the qualudes at this
19 time.

20 Q And then what occurred?

21 A We drove over to the Versailles Apartments.
22 I parked in front with Freddie. He said he would be
23 right back and went inside the front door.

24 He came out about five minutes later and he said
25 the girl only had 1,000 tablets at this time and the

1
2 boyfriend would have the additional 1,500 the next day.
3 And later in the week there would be an additional
4 10,000, but they were coming from Brooklyn.

5 So I told him, okay, I'll take the 1,000 now for
6 \$1.90 a pill.

7 And he agreed. He went back and told me to drive
8 around the back of the Versailles, to the rear exit,
9 and we would do the deal in the back of the apartment.

10 So I agreed and I drove around the back and Freddie
11 went back inside and came down carrying a grey bag.

12 Q Then what occurred?

13 A He opened it up and showed me the pills and
14 I gave him \$1,900.

15 Q And what occurred following this?

16 A I took them back to the New York regional
17 office and I processed them and I put them into the
18 overnight vault for safekeeping.

19 MS. FIELDS: I ask this be marked as
20 Government's Exhibit number 2 for identification.

21 THE CLERK: Substance in the plastic bag
22 marked Government's Exhibit number 2 for identi-
23 fication.

24 THE COURT: This exhibit is marked with the
25 same limitation that I placed upon Exhibit number 1.

1 MS. FIELDS: Yes, your Honor.

2 THE COURT: Now, Mr. Sennett, you said you
3 gave Freddie Moskowitz an undercover telephone
4 number?

5 THE WITNESS: Yes, sir.

6 THE COURT: When you gave it to him did you
7 say anything?

8 THE WITNESS: I told him that's where he
9 could get in touch with me.

10 THE COURT: When someone calls the undercover
11 number, how is it answered?

12 THE WITNESS: Just answer hello.

13 THE COURT: It's not answered Drug Enforce-
14 ment Bureau?

15 THE WITNESS: No, not at all.

16 THE COURT: All right.

17 BY MS. FIELDS:

18 Q I show you what has been marked Government's
19 Exhibit number 2.

20 (Handed to the witness.)

21 Q Can you recognize that exhibit, Mr. Sennett?

22 A Yes.

23 Q And how do you recognize it?

24 A These are the pills I purchased on September
25

15th and I initialled the packages.

MS. FIELDS: At this time the Government would ask that Government's Exhibit number 2 be moved into evidence with the same limitation.

MR. GEOLY: Same objection, your Honor.

THE COURT: And any objection if the same limitation is put on it?

MR. GEOLY: No, your Honor.

THE COURT: The jury understands it has no connection with this defendant unless the Government proves all those elements.

THE CLERK: Government's Exhibit number 2 previously marked for identification now marked in evidence.

Q Now, Mr. Sennett, can you tell us whether or not you had any further contact with Freddie?

A Yes.

Q When was this?

A It was November 24, 1976.

Q What occurred at that time?

A Freddie called me at the undercover phone again and said that he had 50,000 tablets available.

And at this time he made arrangements with me to meet me out in Queens, out at the shopping mall, at the

1
2 White Castle parking lot. And from there we went to the
3 Bayside shopping mall.

4 Q What occurred at the Bayside shopping mall?

5 A We got there. We went into the Bayside
6 Bowling Lanes, I believe is the name of it, and we were
7 in there about five minutes and he said he was expecting
8 a call from people with the pills.

9 And I overheard him talking to an individual named
10 Peter.

11 And after the conversation Freddie said, "Well,
12 I want to see the money first."

13 And I said, "Okay, I'll call my money man," who
14 was Special Agent Mike Torre.

15 Q And then what occurred?

16 A I contacted Agent Torre over at the communi-
17 cations center and told him to bring \$75,000 over into
18 the parking lot to show to Freddie so he knew we were
19 interested in doing business.

20 Q What happened next?

21 A A few minutes later Agent Torre arrived in
22 the parking lot and Freddie and I walked out to Agent
23 Torre's car. And we showed Freddie the \$75,000.

24 Q And what occurred following this?

25 A Agent Torre and Freddie walked back into

1
2 the Bayside Lanes.

3 THE COURT: Where did you get all this money,
4 the \$2,000, the \$1,900, the \$75,000?

5 THE WITNESS: The \$75,000 was -- at that
6 point we didn't have any intention of buying the
7 50,000 pills. It was what we called a flash roll.

8 THE COURT: Where did you get the money?
9 Where did you get the flash roll?

10 THE WITNESS: The New York regional office.

11 THE COURT: Is it checked out?

12 THE WITNESS: Yes; serially, your Honor,
13 yes.

14 THE COURT: All right.

15 BY MS. FIELDS:

16 Q Now, what occurred next, Agent Sennett?

17 A Agent Torre and Freddie went inside the
18 bowling alley and had conversation in the bowling alley.

19 They came outside a while later and at this time
20 Freddie told me the deal could not go down in Queens,
21 we would have to go to Brooklyn because the individuals
22 who had the pills would not bring them to Queens.

23 Q What occurred following this conversation?

24 A I followed Freddie and another individual
25 to a Carvel ice cream shop on Kings Highway, and I believe

1 it's MacDonald Avenue in Brooklyn.

2 Q What occurred when you arrived there?

3 A Around 5:40 that evening an individual
4 arrived in front of the Carvel in a '73 white Cadillac,
5 got out of the car. And Freddie, at this time, intro-
6 duced me to Peter D'Agostino.

7 Q Had you ever met this individual before?

8 A No, I never had.

9 Q And what occurred?

10 A D'Agostino said the pills were only a few
11 minutes away and for me to get the money.

12 And I said, "I'm not going to get the money until
13 I see the merchandise."

14 He agreed, made a phone call. And I remained in
15 the vicinity of the Carvel until around 6:10.

16 Q What occurred around that time?

17 A An old, red Plymouth pulled into the Carvel
18 parking lot. And at this time D'Agostino told me,
19 "Well, the pills are here."

20 And we started walking back to the car, the back
21 of the Carvel. And Moskowitz said, "Yes, that's Sal,
22 that's the guy with the pills. That's the guy that makes
23 them."

24 Q Then what occurred?

25

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2
3 A D'Agostino got into the car, the passenger
4 side of the car, with this other individual and they
5 sat in the car for a minute or two. They both got out.
6 And the driver of the car walked back to the trunk and
7 stood next to me and opened up the trunk.

8 Q What happened then?

9 A I looked into the trunk and I saw a couple
10 of tan-like plastic trash bags and they were knotted.
11 And I tried to un-knot them to take a look to see the
12 merchandise.

13 When I did this the driver of the car got very
14 nervous, slammed the trunk down and got back into the
15 car and drove out of the Carvel parking lot at a fast
16 rate of speed.

17 Q Can you tell us approximately how far you
18 were from this individual you were at the time he
19 opened the back of the car?

20 A Standing right next to him.

21 Q What were the lighting conditions at this
22 time?

23 A It was dusk, getting dark at this time, and
24 it was indirect lighting from the Carvel light, from
25 the Carvel stand.

Q When you say you were standing right next to

1
2 him, approximately how far away from you was he?

3 A No more than two feet.

4 Q Now, would you describe the individual who
5 was the driver of the car.

6 A About five foot eight, dark hair, with a
7 beard, a full beard, with dark work pants and a red
8 sweatshirt.

9 Q And how --

10 THE COURT: What did you say the lighting
11 conditions were?

12 THE WITNESS: It was getting dark. It was
13 not quite dark. It was getting dark.

14 THE COURT: What time of the day was this?

15 THE WITNESS: It was about 6:10, 6:00 o'clock
16 in the evening.

17 THE COURT: No artificial lighting in the
18 area?

19 THE WITNESS: There were no lamps in the
20 back of the Carvel, but there were streetlights
21 on the street in front of the Carvel, and also
22 the light from the Carvel stand.

23 BY MS. FIELDS:

24 Q And will you tell us approximately how long
25 you were able to observe this individual?

Sennett - Direct

20

1
2 A Just from the time the individual got out
3 of the driver's seat and walked back to the trunk of
4 the car.

5 THE COURT: Was it seconds, minutes?

6 THE WITNESS: It was no more than 35, 40
7 seconds.

8 BY MS. FIELDS:

9 Q Is that for the complete transaction?

10 A Yes.

11 Q Now, would you tell us whether or not you
12 see that individual in the Court here today?

13 A Yes.

14 Q Would you point him out for us.

15 A The gentleman sitting right there (indicating).

16 Q Would you tell us what he is wearing, please.

17 THE COURT: Let the record show the witness
18 pointed out the defendant Salvatore Magavero.

19 Q Now, what happened after the red car left?

20 A Well, both Freddie and Peter D'Agostino
21 were extremely upset. They said, "Why did you want to
22 look at the pills for? They were in the car."

23 MR. GEOLY: I will object to this on further
24 grounds.

25 THE COURT: I will allow it with the same

1
2 limitation.

3 I will just strike out "They were extremely
4 upset" because that was an opinion of this
5 witness. The witness is here to just testify as
6 to what happened.

7
8 You can tell us what they did, but not your
9 conclusion that they were upset.

10 Did they speak in a loud voice? Did they
11 in any way wave their hands or make any gestures?

12 THE WITNESS: They stated vehemently --

13 MR. GEOLY: Judge, I will object to the
14 form "they".

15 THE COURT: Tell us who did what.

16 THE WITNESS: Both Freddie and Peter told
17 me that the pills were in the car and why did I
18 want to look at them.

19 BY MS. FIELDS:

20 Q Was there any further conversation?

21 A They told me, both Freddie and Peter told
22 me --

23 MR. GEOLY: May I object, Judge, and have
24 a side bar at this time?

25 THE COURT: The jury may be excused.

(The jury leaves the courtroom and the

1
2 following takes place out of the presence
3 of the jury.)

4 THE COURT: Will any of the accomplices
5 testify at this trial?

6 MS. FIELDS: No, your Honor.

7 THE COURT: Is this really is a case of
8 identification testimony?

9 MS. FIELDS: Yes, sir.

10 MR. GEOLY: But, Judge, at this time it
11 becomes a question of allowing an officer to
12 testify to what a declarant is saying, that he
13 does not know of his own personal knowledge. And
14 under Rule 801, taken in conjunction with 803
15 and 4, it's not admissible and your Honor would
16 have a right to exclude it.

17 From the facts stated here, Moskowitz is
18 with this officer in Queens. He meets D'Agostino
19 at a parking lot. They come up and the officer
20 cannot of his own knowledge tell that there were
21 pills in a bag. And obviously Moskowitz is with
22 him. If we have no other testimony that Moskowitz
23 was able to look into the bag which we have not --

24 THE COURT: I was willing to admit it under
25 the general hearsay exception that this is a

1
2 conversation between a potential conspirator and
3 the witness.

4 MR. GEOLY: Judge, this is not within an
5 exception, general exception to the hearsay rule.
6 It would be allowing this officer to testify to
7 what a co-conspirator said about something or
8 which he had no personal knowledge. The facts
9 adduced before your honor is that no one knows
10 what is in that bag.

11 THE COURT: It doesn't matter. The only
12 thing that bothers me is an objection that you
13 didn't urge, and that is that it wasn't a state-
14 ment made in the furtherance of the conspiracy,
15 except to keep the objects of the conspiracy
16 secret.

17 MR. FIELDS: I think the further testimony
18 would show the statement was made in furtherance
19 of the conspiracy. Because the further testimony
20 by this witness and another witness would indicate
21 that, in fact, they wanted to continue the deal.
22 So this was in furtherance of the conspiracy.

23 THE COURT: Objection overruled.

24 I will allow it on that basis. This was a
25 statement made during the term of the conspiracy

Sennett - Direct

and to advance the purpose of the conspiracy and made by Moskowitz and D'Agostino.

MR. GROLY: I strenuously object on the grounds that it's not within the exception to the hearsay rule. It's double hearsay. You would allow an officer to testify what a declarant said, of which he had no further or such knowledge. And it would be --

THE COURT: I will allow it on the Government's representation that this was part of the conspiracy in which Moskowitz and D'Agostino attempted to revive the deal. And you have an objection.

Seek the jury.

How much longer do you have on your direct?

MS. FIELDS: I believe about five, approximately five more minutes, your Honor.

THE COURT: Let's complete the direct and then I will call a recess because, you know, I am miscellaneous, and I have a Grand Jury proceeding in the other courtroom.

(The jury enters the courtroom and the following takes place in open Court and in the presence of the jury.)

Sennett - Direct

THE COURT: Objection is overruled and I will allow the witness to testify subject to the same conditions I have charged you on before.

All right, Mr. Sennett.

BY MS. FIELDS:

Q Mr. Sennett, the question was whether or not you had any conversation with Mr. Moskowitz, Mr. D'Agostino, after the red car left.

A Yes. At this time they both told me the pills were in the car and why did I want to look at them. And they started stating that Sal didn't like to do the deal in this way, that he didn't want to bring these many pills out on the street.

And I told D'Agostino at this time to go to Sal and try to smooth the thing over and try to work out arrangement where we could still do the deal that evening.

Q Then what happened?

A He left the area and I went back to my car with Freddie Moskowitz.

Q And then what happened next?

A A while later D'Agostino returned to my car with an unidentified female and told me he was going to try to convince Sal to bring the pills back out on

1
2 the street. And in fact, D'Agostino owned a disco-
3 theque in Brooklyn and he had to go there, but he would
4 try to convince Sal to bring the pills back on the
5 street.
6

7 Q What happened after this?

8 A A while later he came back in the car and
9 he told me there was no way Sal was going to bring the
10 merchandise out on the street. But he did say they had
11 approximately \$6,000 of their own cash on hand, and
12 the way the deal could go down is if they took \$6,000
13 and went to Sal, purchased a number of pills, came back
14 and gave them to me, and I would give them the money,
15 and we would do this again and again until we got the
16 50,000 and this way we were working with their money,
17 so if I was afraid of being ripped off for the money,
18 we will be working with their money.

19 THE COURT: What do you mean the way the
20 deal would go down?

21 THE WITNESS: The way we would terminate
22 the transaction. They would constantly front the
23 money. Peter and Freddie would front the \$6,000
24 first, and bring a package back to me, the pills
25 back to me. And then, in turn, I would give them
that amount of money and they would go back with

1
2 that money and just do the transaction in small
3 packages, and not in one lump sum.

4 BY MS. FIELDS:

5 Q Was there any further conversation con-
6 cerning this?

7 A Yes. At this time it was around 9:00
8 o'clock then and I was with D'Agostino and Moskowitz.
9 And together we walked back into the Carvel parking lot.

10 At this time Agent Torre had arrived in the
11 Carvel parking lot and he wanted to speak with D'Agostino
12 and Moskowitz.

13 And so we walked over to where his car was located
14 and at this time Moskowitz had a conversation with
15 Agent Torre.

16 Q What happened following that conversation?

17 A I met with -- again I spoke with D'Agostino
18 and Moskowitz. And they told me the deal was not going
19 to be transacted that evening, it would have to be
20 postponed until later. They felt there was possibly
21 police in the area, Sal felt police in the area and we
22 would have to do the deal at a different time.

23 And at this time D'Agostino also told me he had
24 a shipment of legitimate 714's qualudes which would be
25 available later on in the month.

Sennett - Direct

1
2 Q Can you tell me whether or not you were able
3 to observe any other individuals while you were in the
4 parking lot?

5 A I observed just D'Agostino and Moskowitz and
6 Mr. Mogavero.

7 Q Can you tell me whether or not there were
8 any other agents of the DEA present in that area on
9 November the 4th?

10 A Yes, they were.

11 Q Can you tell me whether or not you were able
12 to observe this?

13 A Yes.

14 Q Now, following November the 4th did you have
15 any further contact with Freddie?

16 A Yes.

17 On January 12th Freddie called me and said he had
18 approximately 25,000 qualudes for sale, and he said
19 nothing could be done at the time because he had to
20 wait for Mr. D'Agostino to come back, and he was on
21 vacation, and that he would call me later on.

22 Q Did you have any further conversation with
23 him?

24 A Yes, on the 27th of January Freddie called
25 and said that Peter D'Agostino was skiing, and as soon

as he came back we would make the purchase.

Q Can you tell us whether or not you had any further contact with Freddie?

A Yes, on February 2nd.

Q What occurred?

A He told me to meet him out at the parking lot. Freddie told me to meet him at the parking lot in the Bayside shopping terrace and we would do the transaction for 25,000 qualudes.

Q What happened next?

A Well, I got out there and Freddie met me in the parking lot and told me that the pills were with Peter and that Peter was holding the pills over at the Versailles Apartments, his girlfriend's apartment, and we would have to go over there.

I tried to get him to bring the pills to the Bayside Plaza, shopping plaza. And he wouldn't agree. He said the pills had to stay in the apartment and for me to go over there, otherwise the deal would go off.

Q What happened then?

A So I walked with Freddie over to the Versailles Apartments, and Freddie and I went over to the lobby of the apartments. And at this time he placed a phone call on the house phone. He pressed Apartment 11R,

Sennett - Direct

1
2 and he talked to an individual, Peter.

3 Q Can you tell us whether or not you had been
4 to this location ever before?

5 A Yes.

6 Q And when was that?

7 A On September 15th.

8 Q What occurred next?

9 A He told Peter to come down, that the man was
10 here to buy the merchandise and we would be in the lobby.

11 I went into the lobby. We were there for a few
12 minutes. An elevator opened up and Peter D'Agostino
13 came out.

14 Q Then what occurred?

15 A We just talked and he said he only had
16 20,000 pills, he didn't have 25,000.

17 And so I said I would take it.

18 And Peter told me we would only do 10,000 at a time.

19 And I told him, "I will not do anything until I
20 see the merchandise."

21 And so he said, "Okay, I'll be right back."

22 So he went back to the elevator and went upstairs.

23 And I saw the elevator stop at 11R -- 11, floor 11.

24 A few minutes later Peter came walking out of the elevator
25 and he was carrying a tan satchel and he said, "There's

10,000 in here.

So we walked to a little corner of the lobby and he opened the satchel and there was a plastic bag there with approximately 10,000 qualudes there.

Q Can you tell us what was to be the price of the pills?

A I believe it was \$1.90 a tablet.

Q What occurred after you saw this satchel with the pills?

A I told Peter okay, I would be back, I just want to get the money, and to go back to the rear exit of the Versailles and park in the back and we would do the transaction for 10,000.

And I said, if everything was okay, I would give him the balance of the money and he could go get the additional 10,000 for me; and he agreed.

Q Then what happened?

A I walked out of the apartment and walked back to the car and advised the surveillance people what was to take place.

I walked back to the rear exit of the Versailles Apartments. A few minutes later Freddie Moskowitz walked around the side of the apartment and he was carrying a satchel.

Q What occurred?

A At this time I made a signal to the surveillance agents and they placed Moskowitz under arrest.

(A satchel is handed to the Clerk.)

THE CLERK: A satchel with contents marked Government's Exhibit 3 for identification.

Q I show you what has been marked Government's Exhibit number 3 for identification.

(Shown to the witness.)

Q Would you identify that for us, please.

A This is the package that Freddie Moskowitz gave to me on February 2nd.

Q I ask that you open the satchel.

A Yes.

MR. GEOLY: Judge, I would object at this time.

THE COURT: Same objection?

MR. GEOLY: Yes.

THE COURT: Same ruling.

It has nothing to do with this defendant unless the Government proves the conspiracy charge in the indictment existed, that Freddie Moskowitz was a member of that conspiracy, and that this

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2
3 transaction was during the term of the conspiracy
4 and for the conspiratorial purposes. And then
5 it's chargeable against the accused if the
6 Government proves beyond a reasonable doubt that
7 he knowingly and wilfully entered into the con-
8 spiracy. Otherwise, disregard it.

9 Q And what is contained within the satchel?

10 A 10,000 methaqualone, qualudes.

11 MS. FIELDS: I would ask at this time, your
12 Honor, that Government Exhibit number 3 be moved
13 into evidence.

14 THE COURT: I have already ruled on it and
15 it may be marked.

16 THE CLERK: Government's Exhibit 3,
17 previously marked for identification, is now marked
18 in evidence.

19 MS. FIELDS: Your Honor, at this time the
20 Government would offer a stipulation which has
21 been entered into by Mr. Geoly and myself, which
22 I would ask to read to the jury.

23 THE COURT: Has it been signed?

24 MS. FIELDS: Yes, sir.

25 THE COURT: All right.

You may read it.

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2
3 MS. FIELDS: It is hereby stipulated,
4 consented to and agreed by and between the
5 defendant Salvatore Mogavero, by his attorney
6 Frank T. Geoly, and David G. Trager, United States
7 Attorney, Eastern District of New York, by Rhonda
8 C. Fields, Assistant United States Attorney, that:

9 It is stipulated, by and between the parties
10 that if Edward Manning, chemist, Drug Enforcement
11 Administration, were called as a witness he would
12 testify as follows:

13 1a, that he conducted scientific analysis
14 of Exhibit number 1. substance purchased on
15 September 2, 1976, by Special Agent Paul Sennett.

16 b, that Exhibit number 1 consisted of
17 approximately 950 tablets weighing 765.02 grams.

18 c, that the tablets were found to contain
19 methaqualone at a strength of 285 milligram per
20 tablet.

21 2a, that he conducted scientific analysis of
22 Exhibit number 2, substances purchased on September
23 15, 1976, by Special Agent Paul Sennett.

24 b, that Exhibit number 2 consisted of
25 approximately 1008 tablets weighing 801.68 grams.

c, that the tablets were found to contain

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methaqualone at a strength of 279 per tablet.

3a, that he conducted scientific analysis of Exhibit number 3, substances seized by Special Agent Paul Sennett on February 2, 1977.

b, that Exhibit number 3 consisted of approximately 9797 tablets weighing 7975.48 grams.

c, that the tablets were found to contain methaqualone at a strength of 305 milligrams per tablet.

That will be all at this time, your Honor.

THE COURT: We will take a recess at this time. I expect we will be ten or fifteen minutes.

(The jury leaves the courtroom.)

(A recess is taken.)

(The following takes place out of the presence of the jury.)

MS. FIELDS: I hand your Honor a copy of the requests to charge.

THE COURT: Did you serve a copy on the defendant's lawyer?

MS. FIELDS: Yes.

THE CLERK: The Government's request to charge is marked Court Exhibit 1.

(The jury enters the courtroom and the

Sennett - Cross

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following takes place in open Court and
in the presence of the jury.)

THE COURT: Cross-examination, Mr. Geoly.

CROSS-EXAMINATION

BY MR. GEOLY:

Q Now, Agent Sennett, on the date where you
identified someone as Sal, what time did you first get
to Queens?

A To Queens?

Q Yes.

A It was around 3:30 in the afternoon.

Q And how long did you stay in Queens?

A Till around 4:00, 4:20, 4:30.

Q And then you came to Brooklyn; is that
correct?

A Yes.

Q And how long was it before you met this
individual called D'Agostino?

A I believe Peter showed up around 5:00, 5:30,
5:40.

Q Now, at that time were there other agents
positioned in the Carvel area?

A In the area, yes, sir.

Q Would you describe the area. You said you

1
2 were in a parking lot; is that correct?

3 A At that time I was standing in front.
4 There was a set of telephone booths right next to the
5 Carvel.

6 Q And did you notice the streetlights go on?

7 A I don't recall. They were on always. It
8 was light.

9 Q In other words, the street lights had gone
10 on?

11 A I believe so.

12 Q And this was November 4th of 1976; is that
13 correct?

14 A That's correct.

15 Q Do you remember the weather conditions at
16 that time?

17 A It was not -- it was clear.

18 Q Now, did there come a time when you
19 positioned yourself in the rear of the Carvel?

20 A Yes.

21 Q Were you in an automobile or were you
22 standing there talking to D'Agostino?

23 A I went to the back of the parking lot of
24 Carvel when Sal came in with his car.

25 Q When this automobile drove in were you in

1
2 the front or in the back?

3 A When Sal came into the parking lot?

4 Q When the individual came in that you described
5 as being Sal, were you in the front or in the back?

6 A I was standing in the front.

7 Q And did you see the automobile drive in?

8 A Yes.

9 Q And this individual was alone at that time;
10 is that correct?

11 A That's correct.

12 Q D'Agostino did not come with him at that
13 time; is that correct?

14 A Yes.

15 Q D'Agostino was there with you; is that
16 correct?

17 A Yes.

18 Q Moskowitz had come with you from Queens;
19 is that correct?

20 A I followed Moskowitz from Queens.

21 Q At no time did you see Moskowitz talk to
22 this individual you call Sal; is that correct?

23 A No, he did not.

24 Q Now, when this automobile drove into the
25 parking lot, can you describe how big the parking lot is?

1
2 A Approximately the size of this courtroom.

3 Q Were there other cars there at that time?

4 A Yes, there was a couple, yes.

5 Q And did the car park with its front towards
6 the back of the parking lot or did it back in?

7 A No, it parked with its front to the back.

8 THE COURT: This courtroom is approximately
9 35 feet wide by 60 feet from the front to the back.

10 Q Now, Officer, during this time you were
11 talking to Moskowitz or D'Agostino, were you wired at
12 the time?

13 A No.

14 Q Is that unusual in a drug operation not to
15 be wired?

16 A Not if there is enough surveillance units
17 in the area. And I didn't have the money at this time,
18 anyway.

19 Q Well, have you gone to other drug arrests
20 or sales where you would be wired?

21 A Yes.

22 Q But you weren't at this time?

23 A No.

24 Q And you say it's not unusual where there are
25 other surveillance units; is that correct?

1
2
3 A At this time the money was protected since
4 it was with Agent Torre. So he had the money. There
5 was no chance if there was a rip-off, so to speak, I
6 didn't have any money.

7 Q At this time you didn't know if you were
8 going to be ripped off or not? In other words, you
9 wanted to see the bills to make sure there are bills
10 before you pay it; is that correct?

11 A Yes.

12 THE COURT: What is a rip-off?

13 THE WITNESS: It's a robbery where they --

14 THE COURT: Tell the jury.

15 THE WITNESS: Where they take the money from
16 the agent.

17 BY MR. GEOLY:

18 Q Can you tell us how many members there were
19 of this surveillance team to make observations and to
20 protect you?

21 A I am not sure of the exact number. There
22 must have been approximately seven or eight agents in
23 the area.

24 Q And did you see any as you walked into the
25 Carvel parking lot?

A I saw agents in various -- moving in the area

Sennett - Cross

1
2 in their cars.

3 Q Do you know if they had any moving pictures,
4 movie cameras?

5 A I don't believe they did.

6 Q After this arrest did you talk to anybody
7 who was there that night.

8 A Did I talk to him?

9 Q Did I? Did you.

10 A When I spoke to Mr. Mogavero --

11 Q I am talking of the agents. Did you talk to
12 any of the agents after you made an arrest in this case?

13 A Yes.

14 Q Did you find out if anybody had a movie
15 camera and took pictures.

16 A There was no movie camera.

17 Q Were there any reports made of the observa-
18 tions by any of the other agents besides yourself?

19 A There was reports, yes.

20 MR. GEOLY: Can I have those reports?

21 MS. FIELDS: Your Honor, I object to this.

22 THE COURT: The jury may be excused.

23 (The jury leaves the courtroom and the
24 following takes place out of the presence
25 of the jury.)

Sennett - Cross

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1 THE COURT: Why do you object to it?

2 MS. FIELDS: Your Honor, certain of the
3 agents will be testifying themselves and that
4 would be 3500 material relating to them. Mr.
5 Geoly received yesterday all of the 3500 material
6 as to this witness.
7

8 THE COURT: None of the other agents' reports
9 contain statements of this witness?
10

11 MS. FIELDS: No, sir.

12 THE COURT: I can't compel --

13 MR. GEOLY: I was under the impression
14 yesterday I was given all the 3500 material.

15 MS. FIELDS: I indicated to you yesterday
16 I was giving you the 3500 material of the first
17 witness.

18 MR. GEOLY: That's not what you indicated
19 to me.

20 THE COURT: I wasn't party to it.

21 MR. GEOLY: It could have been a mistake,
22 your Honor.

23 THE COURT: Under the cases of this Circuit
24 I cannot direct the delivery of 3500 material
25 until the direct testimony of a witness has been
given.

Sennels - Cross

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2 MR. GEOLY: I understand that, Judge.

3 THE COURT: All right.

4 Back the jury.

5 Was all the 5500 material you did give Mr.
6 Geoly marked?

7 MR. FIELDS: It was not.

8 THE COURT: It's very important so the
9 record shows that it was turned over.

10 You said you turned this over to Mr. Geoly
11 yesterday?

12 MR. FIELDS: Yes, sir.

13 THE COURT: After the jury is seated, my
14 courtroom deputy will mark it. It's very important
15 that you mark it.

16 (The jury enters the courtroom and the
17 following takes place in open court and in
18 the presence of the jury.)

19 THE COURT: You may continue.

20 BY MR. GEOLY:

21 Q Now, Officer, as the car drove in, I believe
22 you said that Moskowitz and D'Agostino said the pills
23 are here, is that correct?

24 A That the pills had arrived, yes.

25 Q Before he made that statement, did D'Agostino

1
2 go over to the car or look into it?

3 A No.

4 Q Had Moskowitz gone over to the car and
5 looked into it?

6 A No.

7 Q Can you tell us how far you walked before
8 you got to the car?

9 A From the front of the Carvel store into
10 the rear of the lot.

11 Q Now, the rear of the lot, there are no lights
12 around the perimeter of the Carvel; is that correct?

13 A Well, the Carvel stand is lit up fairly
14 substantially. There were no lights in the back of the
15 parking lot.

16 Q Well, that's the normal Carvel, the white,
17 the illuminated light is in the front, they have a
18 fluorescent light that may go around halfway?

19 A Yes.

20 Q And there are no lights in the parking lot
21 per se?

22 A Right.

23 Q And this car went to the back of the parking
24 lot; is that correct?

25 A Yes.

1
2 Q And you immediately walked towards the car;
3 is that correct?

4 A D'Agostino and Moskowitz and myself walked
5 to the back of the car.

6 Q At the same time simultaneously?

7 A Yes. Three of us walked to the rear of the
8 car and D'Agostino got into the driver's side -- into
9 the passenger side.

10 Q And then this person that you identified as
11 Sal got out. And did he open the trunk?

12 A Yes, he did.

13 Q And at that time you were not able to see
14 whether, in fact, there were any pills in these bags
15 that you say were in there, correct?

16 A Correct.

17 Q And did D'Agostino open the bags to see if
18 there were any pills in there?

19 A No. Sal already closed the trunk and was
20 on his way out of the parking lot.

21 Q Did Moskowitz open the bag?

22 A No.

23 Q At this time was your attention concentrated
24 on the bag?

25 A Yes, when he opened the trunk.

1
2 Q You were trying to see what he had in the
3 bag?

4 A Yes.

5 Q And I assume you were looking at the bag
6 and not this individual whom you call Sal?

7 A At this time, no.

8 Q And then abruptly he slammed the trunk down?

9 A Yes.

10 Q At that time did you notice what kind of
11 shoes he had on?

12 A No.

13 Q Now, tell us what the description was that
14 you said of this person.

15 A It was about five foot seven, five foot
16 eight, 175, 170 pounds, dark hair with a full beard.
17 He was wearing a reddish sweatshirt and work pants.

18 Q Now, did you make out a report of your
19 observations at this time or shortly after that?

20 A I believe it was a day or two later when
21 I went back to the office, yes.

22 Q Did you indicate in your report that the
23 person whom you observed had a beard?

24 A I believe so, yes, sir.

25 Q I show you this.

(Document handed to the witness.)

Q Is there a different report other than this, sir?

I am just talking about the description sheet.
Is there another one I am not privy to?

A This is my report of November 8th, yes, sir.

Q Does it indicate anything about a beard?

A No, it doesn't.

Q But you're certain the person you saw that night had a beard?

A Yes.

Q And was it a full grown beard?

A Yes.

Q Did the person have glasses on?

A No.

Q Did you know the color of the beard?

A Black.

Q Now, how heavy was the person that you say you saw approximately?

A Well, with the work clothes, about 100 -- he looked about 170, 175 pounds.

Q Now, is that the same poundage that you described in your report right after the time or at a time closer to the observation?

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A I had 190 pounds down there.

Q But your best recollection at this point is different from what you put down?

A Like I said, the individual had work clothes on which was bulky at this time.

Q When you see somebody and you evaluate their weight and if you were going to take into consideration their work clothes, would you indicate that?

A Yes.

Q Now, you said the total observation of this individual was between 35 and 40 seconds; is that correct?

A Possibly a little bit longer. I'm not too sure. It's approximately that time.

Q You had said the entire transaction took 35 to 40 seconds. Is that what you said?

A The individual when he got out of the car walked back to the trunk and opened it and it was only a matter of seconds.

Q So your observation -- would you say that your observation actually started of him at the point the trunk was slammed and you saw something was going wrong?

A No. From the time he walked out of the car he walked straight toward me and he stood next to me

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2 when he opened up the trunk.

3 Q Now, as he was walking towards you you say
4 it was a matter of one or two seconds?

5 A Longer than that, I would say.

6 Q From the time it took him to get out of the
7 car to walk to the back, would you say that was about
8 one or two seconds?

9 A He didn't run to the back of the car. He
10 walked casually to the back of the car.

11 Q When he was opening the trunk you were looking
12 at the trunk; is that correct?

13 A Not until the trunk was open when I started
14 looking at the plastic bags.

15 Q How long did it take to open the trunk, sir?

16 A Ten seconds or so.

17 Q Were you talking to Moskowitz and D'Agostino
18 at that time?

19 A No.

20 Q And then the trunk -- and as soon as the
21 trunk was open, your attention was focused in the trunk;
22 is that correct?

23 A Yes.

24 Q And the trunk was slammed and the individual
25 turned around and walked away?

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3 A Yes.
4 Q Or did he run?
5 A No.
6 Q Did he run at that time?
7 A No.
8 Q Did he walk quicker than he walked toward you?
9 A He walked at a normal gait.
10 Q At this point when he was walking away from
11 you, his back was towards you; is that correct?
12 A Correct.
13 Q And did you notice if he had a hood on?
14 A No.
15 Q What?
16 A He did not.
17 Q He did not have a hood on?
18 A No.
19 Q Was it a cold night?
20 A No.
21 Q And you said he had a reddish jacket?
22 A It looked like a reddish sweatshirt, yes.
23 Q Then you saw this individual when he was
24 arrested in February; is that correct?
25 A That's correct.
Q And where did you see him? In other words,

Sennett - Cross

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2 what room did you see him when he was brought in? Was
3 he alone or with other people?

4 A He was with other agents.

5 Q You just walked in and made an identification,
6 a show-up at that time?

7 A When I walked into the processing room of
8 the New York regional office, I went in and Sal was there
9 and I recognized him there.

10 Q Did you say anything to him at that time?

11 A I said, "Sal."

12 And he turned around and acknowledged that was his
13 name; and that was it.

14 Q Did you say, "Sal," in an asking tone at
15 that time?

16 A No.

17 Q Did you go into a room to look at him?

18 A I'm not sure if I came into a room. He was
19 in the processing room on the 18th floor in the New York
20 regional office.

21 Q In other words, he wasn't put in any line-up
22 at that time?

23 A No.

24 Q And everybody else in the room was an agent
25 besides him, is that correct, except him?

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A At this time, yes.

Q And you knew they had gone out and locked up Sal; is that right?

A At that time I did not know, no.

Q When you got to the booking place, were you told that they had locked up Sal?

A I was at the 18th floor. There were other prisoners there at the time. And nobody pointed Sal out to me. I recognized him when he was there.

Q Did he have a beard on at that time?

A No, he didn't.

Q Did he look thinner to you at that time?

A No.

Q Did he still look 190 pounds to you?

A I really didn't check his weight out at this point.

Q Now, Officer -- Agent, how soon after the incident of November 4th did you make your notes concerning that incident?

A I believe my report is dated November 8th.

Q You didn't do it on the night of the 4th?

A No.

Q Did you write down anything?

A No.

1 Q Did you write down anything on the 5th?

2 A No, I did not.

3 Q Did you have conversations with D'Agostino
4 or Moskowitz on the 5th or 6th?

5 A No.

6 Q The 7th or 8th?

7 A No, I did not.

8 Q Were you involved in any other investigations
9 between the 4th to the 8th?

10 A I imagine so, yes, sir.

11 Q Did you speak to other people?

12 A Not relating to this case, no, sir.

13 Q And you were not wired at the time you said
14 that you had these conversations with D'Agostino and
15 Moskowitz on the 4th; is that correct?

16 A I was not wired.

17 Q So, then on the 8th, for the first time you
18 wrote down what you recollected they stated on the 4th;
19 is that correct?

20 A That's correct.

21 Q And you were able to remember now which one
22 said what?

23 A Yes.

24 Q Is that what you're telling us?
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2 A That's correct.

3 Q And when you said that both Moskowitz and
4 D'Agostino made a statement, you remember that they both
5 said the exact same things; is that correct?
6

7 A When Sal came into the parking lot, D'Agostino
8 said, "The pills are here." And Moskowitz said that,
9 "Sal is the guy who made the pills." And that's it.

10 Q Now, did you ever interview Moskowitz or
11 Sal after the arrests?

12 A No.

13 Q Did you interview any of the defendants
14 after the arrest?

15 A No.

16 MR. GEOLY: I have no further questions.

17 THE COURT: Any redirect?

18 MS. FIELDS: No, your Honor.

19 THE COURT: You may step down.

20 Thank you.

21 (The witness is excused.)

22 THE COURT: Your next witness.

23 MS. FIELDS: The Government will call Michael
24 Torre.

25 M I C H A E L A. T O R R E, called as a
witness by the Government, having been first duly

Torre - Direct

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sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: State your full name and spell it for the reporter.

THE WITNESS: Michael A. Torre, T-o-r-r-e.

DIRECT EXAMINATION

BY MS. FIELDS:

Q How are you employed, Mr. Torre?

A How long am I employed?

Q How are you employed, please.

A I am employed -- you said how long am I employed?

THE COURT: What is your job?

THE WITNESS: I didn't hear.

My job, I am a group supervisor or with the Drug Enforcement Administration.

BY MS. FIELDS:

Q How long have you had that job?

A About four years.

Q How were you employed before that?

A I was employed by the US Customs Service for sixteen years.

Q Now, what is the nature of your duties?

A I am a group supervisor.

Torre - Direct

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2 Q And were you so employed on November the
3 4th, 1976?

4 A Yes, I was.

5 Q In what capacity were you working on November
6 the 4th?

7 A Both as a group supervisor and an undercover
8 agent.

9 Q Can you tell us where you were on November
10 4th?

11 A On November 4th I was at the Bay Terrace
12 shopping mall.

13 Q And what occurred at that location?

14 A At the Bay Terrace shopping mall I met with
15 Mr. Sennett and another gentleman who --

16 MR. GEOLY: May I have the same objection
17 to this as I made with the previous witness?

18 THE COURT: Well, thus far no hearsay
19 testimony is offered. All the witness said is
20 he met with Special Agent Sennett.

21 MR. GEOLY: Well, as to any future testimony.

22 THE COURT: I will say that any conversation
23 this witness heard with Mr. Bell or Mr. Moskowitz
24 or Mr. D'Agostino, of course doesn't bind this
25 defendant except on the terms and conditions I

Torre - Direct

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2 previously charged you on; and you can keep that
3 in mind.

4 All right.

5 Q Now, what occurred at the Bay Terrace shopping
6 center?

7 A I met Agent Paul Sennett, who had in his
8 company a male later identified to me as Mr. Moskowitz.

9 Q Did you have any conversation with Mr.
10 Moskowitz at that time?

11 A Agent Sennett brought Moskowitz to my
12 automobile, which is parked at the shopping mall. And
13 I asked Mr. Moskowitz if he wanted to see the money.
14 And he said yes. And then I displayed for him \$75,000
15 in American currency.

16 Q Did you have any further conversation after
17 that?

18 A Yes. I asked, "Did you make arrangements
19 for the deal to take place?"

20 Q What deal was that?

21 A To purchase 50,000 tablets of methaqualone,
22 control substance two.

23 Q What did he say to you?

24 A That, yes, he had arranged for the parties
25 to meet.

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Q Then what occurred?

A Then he left the automobile to go into a bowling alley which is part of the shopping mall, to await a call from his man.

Q Did he tell you this?

A Yes.

Q What did you do?

A I then followed him into the bowling alley and engaged in general conversation. And I asked him what his job was.

And he said he was a food salesman.

And I asked him what he intended to make on this transaction.

And he said he stood to make two cents a pill.

Q What happened next?

A After a few minutes I left the bowling alley and returned again, and I left a second time. And then after the second time Mr. Moskowitz told me not to go too far because the telephone call would come shortly.

I left the bowling alley and shortly thereafter Mr. Moskowitz called to me to go into the bowling alley.

Q And did you go into the bowling alley?

A Yes.

Torre - Direct

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Q What occurred?

A As I met Moskowitz at the bowling alley entrance, he took me inside and we walked to the far wall of the right-hand side of the bowling alley where I seen a young man talking on a telephone. And as he approached the man he hung up the telephone, turned his back towards us. And when he turned around again he gave Moskowitz a little piece of paper and he said, "Call this number."

Q And then what happened?

A I had asked Moskowitz, who was this individual.

He refused to identify him to me.

And from there we went from that point to the entrance of the bowling alley and he made a telephone call, using the number given to him by that other individual.

Q Who was making this telephone call?

A Mr. Moskowitz.

Q Then what happened?

A He spoke to an individual whom he identified as Peter to me. And he asked me if I would consent to do the transaction in Brooklyn.

And I said, "Wait a while, let me talk to the other

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man."

And I spoke to Peter on the telephone. I introduced myself to him. He told me his name is Peter. And he said, "The deal would be more easily done if it was done in Brooklyn."

And I said, "Well, I'll consider it."

And I said, "How many pills do you have?"

And he said, "I have 25,000 pills."

And I said, "We arranged to get 50,000."

And he said, "I have only 25, and by the time you get here I'll have the other 25 here."

And I said, "How do I get there?"

And he said, "Mr. Moskowitz will tell you how the deal would take place."

And I said, "Fine." And I gave the phone back to Mr. Moskowitz and he had a few words and then he hung up.

Q And then what happened following this telephone conversation?

A I asked Mr. Moskowitz what was the new meeting place we had agreed to go to.

And he said the next meet would take place at the parking lot of the Carvel ice cream store on Kings Highway and McDonald Avenue.

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2 And I told him I would go there on my own because
3 I was carrying this much money with me and I didn't
4 trust his friends and therefore I would meet him there
5 if necessary.
6

7 And I told him this, too: "If you need me," I
8 said "If you need me, Paul knows where I'll be. He
9 will contact me if you need me."

10 That's how we left off and we had said goodbye.

11 Q Then what did you do?

12 A I drove to the area, and about 9:00 o'clock
13 I drove into the parking lot of the Carvel ice cream
14 store on McDonald Avenue and Kings Highway.

15 Q And what occurred then?

16 A I seen Paul Sennett bring over to the
17 vehicle, my car, two individuals. One I knew as Freddie
18 Moskowitz, and the other one I didn't know.

19 As they came closer to the car Moskowitz
20 introduced the individual to me as Peter D'Agostino.

21 Q Did you have any conversation then?

22 A Yes. I said to Moskowitz, "What happened?"

23 And he said, "Your man blew the deal."

24 And I said, "What do you mean, my man blew the
25 deal?"

He said, "The pills were in the trunk of the car

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2 and he wanted to play with them and my man got scared
3 and he took off."

4 MR. GEOLY: Again I object to this on the
5 additional grounds.

6 THE COURT: Additional?

7 MR. GEOLY: Not being an exception of the
8 hearsay rule.

9 THE COURT: Overruled. I will allow it.

10 Q And was there any further conversation?

11 A Mr. Moskowitz had said to me, "Listen,"
12 he said, "The deal can go down, but it has to go down
13 a different way. It would have to be done in small
14 sized packages."

15 And I said, "Wait a while. I don't believe you
16 any more because you told me you were going to do the
17 deal in Queens and then it's Brooklyn. You told me
18 you were going to sell me 50,000, you have 25,000. You
19 told me it would go down one, two, three in Brooklyn.
20 And here it's a few hours later and still no buy took
21 place."

22 And I said, "I don't trust you at all."

23 And he said, "You can trust us because Sal is
24 Peter's cousin."

25 And so I said, "Sal is a funny guy."

Torre - Direct

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2 And he said, "He would do it in small increments,
3 but not in a large sale as you anticipated."
4

5 Q And what, if anything, else occurred?

6 A They said to me, "Listen. If you agree to
7 it we will go down to -- we have \$6,000 involved in
8 this transaction, Peter and I. We will go down a block
9 away," and he motioned in the direction of Dahill Road,
10 "because that's where we will wind up in the parking
11 lot." And he said, "We'll go down there and buy
12 10,000 pills, bring them to you. You give us \$6,000
13 more and we will buy 10,000 more for you."

14 And I said, "No way will I do that for you."

15 He said, "That's the way Sal will do it."

16 And I said, "No way."

17 And I asked Mr. Moskowitz, does he have another
18 way to do the transaction. And he said no.

19 And I said, "Fine. The deal is off, fine." I
20 said, "If you arrange a better way to do the transaction,
21 I will listen to you."

22 And then we said it's all over and he drove out
23 of the parking lot.

24 That would be all at this time.

25 THE COURT: Cross-examination.

MR. GEOLY: Can I have the 3500 material?

MS. FIELDS: It was included in the ones
I gave you on Agent Sennett.

MR. GEOLY: There was no separate report;
is that correct?

MS. FIELDS: No.

CROSS-EXAMINATION

BY MR. GEOLY:

Q Can you tell us at what time --
Withdrawn.

Did you go to Brooklyn with Agent Sennett?

A No.

Q Did you arrive there before -- did you
arrive there before him or after him?

A I would say probably about the same time.

Q And would you say it was some time after
6:00?

A Yes.

Q And as you notice, the street lights had
gone on?

A Yes, the lights went on, yes. At the time
I arrived there it was fairly dark. The lights went
on, yes.

Q And you didn't see anything that happened
in the back of Carvel; is that correct?

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A No, sir.

Q Were there any other agents there with you?

A No. There were two other agents in the car behind me, right.

Q Well, when you got to Brooklyn were you alone in your automobile?

A Yes. I am alone in my automobile, yes, I was.

Q And you came with two other agents?

A Yes, who were in another car.

Q And they weren't able to see what happened in the parking lot, either; is that correct?

A For the time with me, yes.

MR. GEOLY: I have no further questions.

THE COURT: Any redirect?

MS. FIELDS: Just one further question, your Honor.

REDIRECT EXAMINATION

BY MS. FIELDS:

Q At approximately 6:00 o'clock where were you located?

A :00 o'clock I would say probably in Brooklyn, the specific location being McDonald Avenue, about three blocks from the Carvel ice cream store.

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3 Q Three blocks away?

4 A Yes.

5 MS. FIELDS: That would be all.

6 THE COURT: Anything further, Mr. Geoly?

7 MR. GEOLY: No.

8 THE COURT: You may step down.

9 Thank you.

10 (The witness is excused.)

11 THE COURT: Your next witness.

12 MS. FIELDS: The Government would call

13 Robert Baker.

14 R O B E R T B A K E R, called as a witness by
15 the Government, having been first duly sworn by
16 the Clerk of the Court, was examined and testified
17 as follows:

18 THE CLERK: Would you state your name,
19 please, and spell it for the record.

20 THE WITNESS: Robert Baker, B-a-k-e-r.

21 THE CLERK: Be seated, please.

22 DIRECT EXAMINATION

23 BY MS. FIELDS:

24 Q How are you employed, Mr. Baker?

25 A Drug Enforcement Administration.

Q And howlong have you been so employed?

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A A little over three years.

Q Now, were you so employed on November 4, 1976?

A Yes, I was.

Q And what were you doing on the afternoon of November 4, 1976?

A I have two functions. One as security for money and surveillance duties.

Q Now, was there anyone with you at this time?

A Yes, there was. There was a special agent, Alfred Cavuto.

Q Can you tell us whether or not there came a time you were in the vicinity of East 4th Street and Kings Highway?

A Yes, there was.

Q And approximately what time was this?

A Approximately 5:30, quarter to six.

Q What is located in this area?

A It was an ice cream establishment there, Carvel.

Q What, if anything, did you observe at this time?

A Well, at that time I was on surveillance, moving surveillance. I observed while passing in front of a Carvel place, I observed a red car, license plate

number 375XVJ parked in the rear of the parking lot.

Q What, if anything, else did you observe?

A I observed several people around the undercover agent and several other people around the car.

Q And who was the undercover agent you observed?

A Paul Sennett.

Q What, if anything, else happened?

A I saw the trunk on the red car up. At that point I moved out of view of the red car.

Q Then what happened?

A I circled the block. Agent Cavuto was driving. We circled the block and at the time we got back on Kings Highway the red car was pulling out of the Carvel.

Q What happened?

A We maintained surveillance on the red car.

Q What does that mean?

A That means we observed the red car, whatever activity it was in.

Q Okay.

Q And what happened?

A We followed it to the vicinity of 1711 Dahill Road, where it was parked.

Q What, if anything, did you do?

A I got out of my car and followed the individual

Baker - Direct

who was driving the car on foot.

Q What did he do?

A He walked down to a corner candy store where he entered and made a phone call.

Q Approximately what time was this now?

A This was about 6:30, twenty minutes to seven.

Q All right.

And would you tell us how long you observed this individual?

A Oh, four or five minutes.

Q What were the lighting conditions like at this time outside?

A At the Carvel it was pretty light. And in the candy store, of course, it was lit, lit well.

Q What were the lighting conditions like outside the candy store?

A It was dark.

Q What, if anything, did you observe at the time you were at the candy store?

A I observed this gentleman over here making a phone call.

Q Would you describe what he looked like at that time?

A He was a short stocky fellow with a beard.

Baker - Direct

He was wearing a red-like warm-up shirt, you know, with a hood to it, and dark trousers. I forgot what color the trousers were.

Q Do you see that individual in Court today?

A Yes, I do.

Q Would you point him out for us.

A This gentleman over here. (Indicating.)

Q How is he dressed?

A He has on a black and white tie, white shirt and a plaid suit.

THE COURT: Let the record show the witness pointed out the defendant Salvatore Mogavero.

Q What, if anything, occurred after you observed Mr. Mogavero in the candy store?

A I walked out the area to a pizza parlor to try to contact my fellow agent.

Q Did you contact them?

A Yes, I did.

Q What occurred later on?

A He picked me up and we maintained surveillance until the termination of the action out there.

Q What, if anything, occurred at this time.

A On the way back we had received over our radios that surveillance team was meeting. And on our

Baker - Direct

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way back to the meeting spot we went through Dahill Road where we observed a '73 white Cadillac being double parked in front of 1711 Dahill Road.

Q Can you tell us whether or not you had seen this white Cadillac before?

A Yes, I had, I had. It was parked across the street from the Carvel at one point during the surveillance.

Q Would you tell us whether, Mr. Baker, whether or not you noticed the license plate of the red car you followed?

A Yes, I did.

Q What was the number?

A 375XVJ.

MS. FIELDS: Your Honor, at this time there is a further part of the stipulation which was signed by counsel.

THE COURT: All right.

MS. FIELDS: It is further stipulated, by and between the above-mentioned parties that if a representative of the New York Department of Motor Vehicles were called as a witness he would testify as follows:

1. that the vehicle bearing the New York license 375XVJ is registered to Franca Mogavero,

Baker - Direct

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1711 Dahill Road, Brooklyn, New York.

That's all at this time, your Honor.

MR. GEOLY: Do you have any 3500 material?

(Documents referred to handed to Mr. Geoly.)

MR. GEOLY: May I have a few minutes, Judge,
to look at it?

THE COURT: We will take a short recess.

The jury is excused.

(The jury leaves the courtroom and the
following takes place out of the presence
of the jury.)

THE COURT: You may step down, Mr. Baker.

THE WITNESS: Thank you.

THE COURT: You may not leave the courtroom,
however.

(A recess is taken.)

(The following takes place out of the
presence of the jury.)

THE COURT: Please mark the 3500 material.

THE CLERK: For the record. 23 pages of
report marked Government's Exhibit 3500-1.

Grand Jury minutes of Agent Sennett marked
Government's Exhibit 3500-2.

A three page report marked Government's

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2 Exhibit 3500-3.

3 THE COURT: 23 pages?

4 THE CLERK: Yes, on Sennett and Torre
5 combined.

6 THE COURT: How long would you be, Mr. Geoly?

7 MR. GEOLY: A few minutes.

8 MS. FIELDS: The Government has only one
9 more witness testifying at a suppression hearing
10 this morning in the Southern District who hasn't
11 arrived yet and we are trying to get him now to
12 see that he is on his way.

13 THE COURT: We will have to suspend then at
14 the end of this witness' testimony unless the other
15 witness comes in.

16 MS. FIELDS: We have called now to try to
17 contact him, your Honor.

18 THE COURT: All right.

19 MR. GEOLY: All right, your Honor.

20 THE COURT: Seek the jury.

21 (The jury enters the courtroom and the
22 following takes place in open Court and in
23 the presence of the jury.)

24 CROSS-EXAMINATION

25 BY MR. GEOLY:

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W. Agent Baker, you were in Queens on

November 4th, is that correct?

A Pardon me, sir?

Q Did you start off in Queens on that day?

A Yes, I did, sir.

Q And what time did you get to Brooklyn?

A Oh, about 4:30, 5:00 o'clock.

Q Let me ask you this: Did you make any notes with reference to this case?

A Did I make any notes?

Q Yes.

A No, I didn't.

Q Did you refresh your recollection by any notes before you came here today?

A Did I refresh my memory from my records?

Q You just said you didn't make any notes; is that correct?

A That's right.

Q Do you have any records?

A Do I have any records? No, I don't.

Q Did you refresh your recollection by any records that somebody else made?

A Yes, I did.

Q Did you look at Agent Sennett's records?

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2 A No, I did not.

3 Q Did you look at Mr. Maher's records?

4 A Yes, I did.

5 Q Who else was in the car with you on the
6 night you were making these observations?

7 A Special Agent Alfred Cavuto.

8 THE COURT: Did Mr. Maher make a report here?

9 MS. FIELDS: Yes, your Honor, and it's
10 already turned over to counsel.

11 THE COURT: All right.

12 Q Mr. Maher was not in the automobile with you;
13 is that correct?

14 A That's correct.

15 Q And yet you refresh your recollection from
16 what happened that night from his records; is that right?

17 A Yes, sir.

18 Q And do his records contain a statement of
19 what you supposedly saw?

20 A I don't think it did, sir.

21 Q Well, doesn't Mr. Maher's records give a
22 statement of the observations you made?

23 A No, sir.

24 Q Now, you say you made observations on
25 November 4th; is that correct?

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2 A Yes, sir.

3 Q Did you at any time write down a description
4 of the individual whom you say you saw?

5 A I didn't have to, sir.

6 Q That's not my question. I asked you, did
7 you?

8 A No, I didn't.

9 Q When for the next time did you see this
10 individual whom you say you saw on November 4th?

11 A When was the next time I saw him?

12 Q Yes.

13 A The date of the arrest.

14 Q February what?

15 A I don't recall the date.

16 Q Now, you saw a man on November 4th; is that
17 correct?

18 A Yes.

19 Q Did he have a beard at that time?

20 A Yes, he did.

21 Q What was the closest that you ever came to
22 this individual?

23 A Twenty yards.

24 Q That's sixty feet?

25 A Twenty yards.

Baker - Cross

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2 THE COURT: This courtroom is about sixty
3 feet. Would you say that's about it, from back to
4 front?

5 THE WITNESS: Yes, your Honor.

6 BY MR. GEOLY:

7 Q That's the closest you came to him?

8 A Yes, sir.

9 Q And I believe you stated the observations
10 of your -- from your automobile were made while you were
11 moving?

12 A Yes, sir.

13 Q How fast were you moving?

14 A Oh, about 15 miles an hour, I guess, maybe
15 slower.

16 Q When you made the observation of this auto-
17 mobile in the back of the Carvel where you said you saw
18 somebody by the trunk, you were moving 15 miles per
19 hour; is that correct?

20 A Approximately. I am not really sure how
21 fast it was. Slow enough.

22 Q Can you tell us how big of a view you had
23 from one end of the parking lot to the other?

24 A I had a view of the whole parking lot.

25 Q Oh, were you moving across?

1
2 A Across the front, yes.

3 Q At 15 miles per hour you were able to make
4 an observation?

5 A Yes, sir.

6 Q Were you able to observe there was a person
7 with a beard at that time?

8 A Yes, sir.

9 Q Were you the driver or were you the passenger
10 at that time?

11 A I was the passenger, sir.

12 Q And were you at the side closest to the
13 parking lot or the side away?

14 A In the passenger seat, yes, sir.

15 Q And at this time would you say -- was it
16 6:30, you said, at this time?

17 A The first time I observed him was about 6:10,
18 6:15.

19 THE COURT: Did you use binoculars?

20 THE WITNESS: No, your Honor.

21 BY MR. GEOLY:

22 Q Did you take any moving pictures of him?

23 A No, I didn't.

24 Q Would you say the observations you made
25 while you were passing the Carvel parking lot was a

1
2 matter of seconds or two?

3 A A good ten seconds.

4 Q Ten seconds?

5 A Seconds, yes.

6 Q If we were to work out a formula of fifty
7 miles an hour for forty feet, would it come to ten
8 seconds or would it come to much less?

9 A I have no idea.

10 Q Your testimony is you were going about fifty
11 miles an hour?

12 A Or less, I said, or less.

13 Q Right.

14 A Or less, yes.

15 Q Now, you said you went around the block; is
16 that correct?

17 A Yes, sir.

18 Q Now, when you came back you said you saw this
19 red automobile again?

20 A Yes, sir, pulling out of the Carvel lot.

21 Q Any cars between you and the red automobile?

22 A Not at that time, sir, no.

23 Q You said it stopped at Dahill Road?

24 A Yes, sir.

25 Q Any cars there at that time?

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A On Dahill Road, sir?

Q Yes.

A Yes, cars in the street.

Q Any cars between you and this automobile?

A Any cars, sir?

Q Yes.

A Yes, sir.

Q Were you parked at that time?

A The car was parked momentarily at Dahill when I got out of the car.

Q Well, 1711 Dahill Road is about four houses from the corner; is that correct?

A Yes, approximately.

Q Now, the individual did not go into 1711 Dahill Road; is that correct?

A No, sir.

Q Was the car parked and left there?

A Was it parked and left?

Q Yes.

A Yes, sir.

Q And at that time you were still about sixty feet away or twenty yards?

A At that point, sir, I don't recall the distance.

1
2 Q Were you further away at that time since he
3 was walking and you were in the automobile still?

4 A Pardon me?

5 Q You were still in the automobile; is that
6 correct?

7 A Let me clarify this.

8 When he parked the car we drove by. And my
9 partner stopped the car at the corner of Dahill. And
10 as you say, 1711 is approximately four or five houses
11 from the corner. I got out of my car immediately and
12 this gentleman here was out of his car also approximately
13 at the same time.

14 Q Did you drive right up to the automobile?

15 A No, sir. I said I was on the corner.

16 Q In other words, you were still about twenty
17 -- he was still about twenty yards away from you at that
18 time?

19 A I would say more.

20 Q How much more, sir?

21 A Twenty -- thirty yards, I guess.

22 Q Ninety feet away?

23 A Yes.

24 Q Now, we are talking about a city street; is
25 that correct?

1
2 Q And now, at this time is it closer to 6:30,
3 quarter to seven?

4 A Yes.

5 Q It's fully dark; is that correct?

6 A Yes, sir.

7 Q And this individual walked away from you at
8 that time?

9 A Yes, sir.

10 Q And he walked into a candy store, you say,
11 right?

12 A That's correct.

13 Q Did you ever engage this individual in any
14 conversation?

15 A No, sir.

16 Q Did you, at any time, at that time or any
17 time thereafter write down a description of the indi-
18 vidual whom you say you saw?

19 A No, sir.

20 THE COURT: Did you enter the candy store?

21 THE WITNESS: No, I didn't, your Honor.

22 THE COURT: You saw him through the candy
23 store window?

24 THE WITNESS: Through the door, your Honor.

25 THE COURT: The door?

Baker - Cross

31

THE WITNESS: Yes, sir.

BY MR. GEORGE:

Q You saw this individual through the door at about ninety feet; is that correct?

A No, it's not correct.

Q How far are you at this time?

A Again, about twenty yards, I would say.

Q That's about sixty feet away?

A Yes.

Q And I believe you said this individual had a hood on?

A He had a hood on his sweater.

Q There was a hood, though?

A Yes.

Q And you definitely saw a beard?

A Yes.

Q And was it a full-grown like you have, sir?

A No, it wasn't quite fully grown.

THE COURT: Did he have the hood over his head?

THE WITNESS: No, he didn't, your honor.

BY MR. GEORGE:

Q And did you notice the color of his trousers at this time?

A Dark trousers, work trousers, something like

1
2 that.

3 Q Did you ever jot down any place his height?

4 A Only in my head.

5 Q Did you ever jot down his weight?

6 A His weight?

7 Q Yes.

8 A No, sir.

9 Q Did you ever look at the description given
10 by Agent Sennett?

11 A No sir.

12 Q Now, you said you saw this individual again
13 on a date in February when he was arrested; is that
14 correct?

15 A Yes, sir.

16 Q Did you see him in a line-up at that time?

17 A Pardon me, sir?

18 Q Did you see him in a line-up at that time?

19 A No, sir. I was one of the arresting agents.

20 Q You went to his house?

21 A Yes, sir.

22 Q You went right to his house and you locked
23 him up although you were one of the witnesses to
24 identify him; is that correct?

25 A Pardon me, sir?

Baker - Cross

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Q In other words, the next time you saw him is when you, yourself, went to lock him up?

A Yes, sir.

Q And what did you say when you opened the door? He opened the door, did you ask who he was?

A No. The first thing I did was identify myself.

Q Who was there at that time?

A Special Agent Frank Torez.

Q When you got back to the bureau or the processing place, did you question him?

A No, I did not, sir.

Q Anybody question him in your presence?

A Not in my presence, sir.

Q Did you have any statements with the defendant at his home?

A That he was under arrest.

Q Did he say anything at that time?

A Yes, sir.

Q What did he say?

A He didn't understand what was going on.

Q What else did he say?

MS. FIELDS: Objection, your Honor.

THE COURT: Objection sustained.

1 MR. GEOLY: I have no further questions.

2 THE COURT: Any redirect?

3 MS. FIELDS: No, your Honor.

4 THE COURT: You may step down.

5 Thank you.

6 (Witness excused.)

7 THE COURT: Next witness.

8 MS. FIELDS: Yes.

9 Ronald Catanese, please.

10 R O N A L D C A T A N E S E, called as a witness

11 by the Government, having been first duly sworn

12 by the Clerk of the Court, was examined and

13 testified as follows:

14 THE CLERK: State your name and spell it for
15 the record.

16 THE WITNESS: Ronald Catanese, C-a-t-a-n-e-s-e.

17 DIRECT EXAMINATION

18 BY MS. FIELDS:

19 Q Now are you employed, Mr. Catanese?

20 A I am employed as a special agent for the
21 Justice Department, Drug Enforcement Administration.

22 Q And how long have you been so employed?

23 A Approximately two years.

24 Q Now, would you tell us whether or not you
25

Baker - Direct

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2 were on duty on November the 4th, 1976?

3 A Yes, I was.

4 Q And where were you on duty that day?

5 A I was in the vicinity of Kings Highway and
6 East 4th Street, I believe, in Brooklyn.

7 Q And what is in that area?

8 A There is a Carvel.

9 Q What were you doing in that location?

10 A We were conducting a surveillance in which
11 quite a few people were involved, agents and also
12 defendants.

13 Q Where were you located specifically?

14 A I believe my location was on East 4th Street.
15 We were right next to the Carvel. We could see the
16 side of the Carvel and the parking lot.

17 THE COURT: Does McDonald Avenue also inter-
18 sect Kings Highway at that point?

19 THE WITNESS: Yes, I believe it's right
20 there, also.

21 BY MS. FIELDS:

22 Q What, if anything, did you observe while
23 you were in that location?

24 A I observed several of the defendants that
25 were present there. I remember two cars being present --

1
2 three cars being present, one being a Jaguar, one being
3 a white Cadillac which at one point was parked directly
4 in front of us. But there was a driveway there and
5 they wound up moving it and also a red Plymouth.

6 Q The red Cadillac -- the white Cadillac, did
7 you observe the individual who in the Cadillac?

8 A Yes, I did.

9 Q What, if anything, did that individual do?

10 A Well, he did many things. He was in and out
11 of the car talking to several people. And at one point
12 he met with an individual who was wearing a red sweat-
13 shirt and overalls and had a beard. This person came
14 from somewhere behind us. The street was very dark.
15 There was a lot of trees and we didn't really notice him
16 until he met with the individual from the white Cadillac
17 who I think his name was D'Agostino. He came -- he
18 came across the street and they talked up the block
19 from us. And then they walked right by the car I was
20 sitting and passed us, and then crossed the street
21 behind us. And a few minutes later we seen a red
22 Plymouth go by which turned the corner and pulled into
23 the back of the Carvel. And we then saw this person
24 who had walked by us wearing this red sweatshirt and
25 the overalls get out of the car. And at that point

Baker - Direct

there were about four or five individuals, including Special Agent Paul Sennett, congregated at the rear of the trunk and parked his car in the rear of the parking lot. And they were talking and milling about. And the trunk was then opened and the trunk was closed. And this person in the red sweatshirt with the beard got back into the car and drove out of the lot. And Agent Sennett was still there and he was talking to three, two or three other people who were still there. And we stayed -- I stood where I was for about another hour.

Q Would you tell us what, if anything, the individual who was in the white Cadillac did after speaking with the person in the red sweater?

A He was talking to Paul.

Q By that you mean Agent Sennett?

A Yes, Paul Sennett.

Q Can you tell us whether or not you had an opportunity to observe the face of the man in the red sweatshirt?

A No, I never saw his face.

Q Now, can you tell us whether or not you were on duty on February 2, 1976?

A Yes, I was.

Q And where were you on that date?

Baker - Direct

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2 A Initially we started a surveillance in a
3 shopping mall located on Bell Boulevard in Queens, New
4 York. That was about 3:30 in the afternoon.

5 Eventually we wound up at a building complex
6 located at 215th Street. The name of the building was
7 the Versailles, and I believe the address is 1505 or
8 1805 215th Street.

9 And at that point there was a transaction that
10 was going to take place between Paul Sennett and -- who
11 was working undercover at the time -- and this other
12 fellow named Freddie Moskowitz.

13 Q And what was your purpose of being in this
14 location at that time?

15 A Basically surveillance, and we are going to
16 arrest the people. So we were back-up for the arrest.
17 There were quite a few agents involved in this operation.

18 Q Did there come a time when an arrest was
19 made?

20 A Excuse me?

21 Q Did there come a time when an arrest was
22 made?

23 A Yes.

24 Q What did you do following that arrest?

25 A The arrest took place in the back of this

Baker - Direct

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2 building. The person they had arrested had gone into
3 the building for the package which turned out to be
4 drugs later on. And he was arrested when he came back
5 to the car. And he was arrested and what they did was
6 they wanted to find out where he had gone, and so they
7 took him into a building where there was a doorman.

8 Q What did you do at this point?

9 A At this point I had gotten back into my
10 car with my partner and we drove around to the front of
11 the building. The building is located in like a cul de
12 sac. It's sort of like a big circular driveway and
13 there are two buildings located, one on one side and
14 one on the other side, and we turned around to the right
15 and came back to the building he had gone into.

16 And my partner was driving and I was sitting in
17 the passenger seat. And he stopped the car about two
18 or three car lengths up to the entrance of the building
19 and he got out of the car and I told him I was staying
20 to monitor the radio because there were quite a few
21 agents already inside the building.

22 Q What, if anything, did you observe at this
23 time?

24 A While I was sitting in the car, it was quite
25 cold outside and we were about the few people who were

1
2 outside. And I noticed an individual walk by me. And
3 maybe about 15 or 20 seconds later he walked back the
4 other way. And I really didn't pay attention to him
5 and I didn't know who he was. The only reason he caught
6 my eye is that he was like the only person who walked by.
7 And his hair was cut nice. And I needed a haircut at
8 that particular point, so it kind of reminded me to get
9 a haircut.

10 Q Now, can you tell us whether or not there
11 came a further time you saw this individual?

12 A Yes. At about -- this was about 4:00
13 o'clock in the afternoon.

14 My partner and I, in connection with the same case,
15 had to arrest somebody else. And it wasn't until about
16 9:00 o'clock that he returned home that we were able to
17 affect our arrest. And we returned to the office at
18 approximately 9:30, at which point when we got to our
19 processing area we walked through -- into our doorway
20 which contains our processing area. And we had several
21 interview rooms that are located in there. And at the
22 end of the hallway was another agent I saw because the
23 door was opened. And I had to speak to him about
24 another unrelated matter to that case. And I went back
25 to talk to him and when I walked in the door I saw this

1
2 individual who had walked by me while we were at this
3 location earlier. And I was really surprised.

4 And I said, "Who is he? What is he doing here?"

5 And at this point the other agent said, "The
6 guy's name is Sal Mogavero."

7 Q Can you tell us whether or not you see that
8 individual in the courtroom today?

9 A Yes, I do. He is seated at that table
10 wearing sort of a plaid suit and a white shirt and tie
11 with sort of a white chevron on it.

12 THE COURT: Let the record show that the
13 witness is indicating the defendant Salvatore
14 Mogavero.

15 MS. FIELDS: That will be all, your Honor.

16 CROSS-EXAMINATION

17 BY MR. GEOLY:

18 Q Officer, did you question Mr. Mogavero
19 the night he was questioned?

20 A I had a conversation with him. I guess you
21 can term it questioning.

22 Q Did he tell you that --

23 MS. FIELDS: Objection, your Honor.

24 THE COURT: Do you intend to pursue this?

25 MR. GEOLY: Yes, your Honor.

1 THE COURT: Do you want to argue this?

2 The jury may be excused for lunch.

3 Please return at 2:00 o'clock, 2:00 o'clock.

4 (The jury leaves the courtroom and the
5 following takes place out of the presence
6 of the jury.)

7 THE COURT: You may step down.

8 THE WITNESS: Thank you, your Honor.

9 THE COURT: On what theory do you say
10 statements of the defendant showing innocence
11 are admissible?

12 MR. GEOLY: First of all, on the question
13 I had asked him that was not my purpose. The
14 officer had testified that he saw him in Queens
15 and it looked like he had a nice haircut. I was
16 going to ask the officer, did the defendant tell
17 you he was in Queens to get a haircut. It has
18 nothing to do with the statement of innocence or
19 guilt, but the purpose he was there for.

20 THE COURT: It tends to innocence.
21 And identification is one of the issues here.

22 MR. GEOLY: I was served with a notice of
23 statement by the Government that they intended
24 to offer that statement against the defendant.
25

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2 THE COURT: The Government may offer
3 statements against the defendant. A defendant
4 may not offer statements showing he is innocent.

5 MR. GEOLY: Judge, the officer testified
6 he saw a man who just -- who looks like he came
7 out of a barber shop. And when the defendant
8 was questioned he said he was just there to get
9 a haircut.

10 THE COURT: You can ask him if he said he
11 was there to get a haircut.

12 MR. GEOLY: That's what I was going to ask
13 him.

14 THE COURT: Not that he was there in Queens
15 to get the haircut.

16 MR. GEOLY: He got the haircut in Queens.

17 THE COURT: That may be so. And let the
18 defendant get on the stand to testify as to that.
19 And the Government would have the right to cross-
20 examine him on that statement. But the witness
21 didn't say that this defendant went to Queens and
22 got a haircut. He just said it was a fresh
23 haircut. You want to show the defendant was in
24 Queens. That may be important to the defense.
25 It's not admissible. It tends to show innocence.

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2
3 MR. GEOLY: Would I be allowed to ask him
4 if he just stated he had just gotten a haircut

5 THE COURT: Sure. It's all right.

6 But I sustained the objection to the other
7 question when Ms. Fields rose and said I object,
8 because there again, you were trying to get the
9 defendant's statement into the record showing his
10 innocence. He pleaded not guilty. We know he
11 said he is innocent.

12 MR. GEOLY: Judge, I would say under the
13 circumstances of this case that the questioning
14 at the Precinct, in the defendant offers that in,
15 should be allowed in.

16 THE COURT: No.

17 MR. GEOLY: Any questions they asked him
18 relating to the case, I would like to bring that
19 out as to what questions and answers he gave.

20 THE COURT: They can come in to explain
21 any statements made by the witness or questions
22 that may be directed to the credibility of the
23 witness. But when you try to get statements of
24 the defendant that tend to show his innocence,
25 they just are not admissible.

MR. GEOLY: Will I be precluded -- we will

1
2 take it as they come.

3 THE COURT: No. If there is a question, I
4 would like to answer it or you ask it before
5 it's asked in front of the jury.

6 Precluded from what?

7 MR. GEOLY: The defendant said certain
8 questions were asked of him, do you know X or do
9 you know Y.

10 THE COURT: Objection sustained.

11 It does the same thing. He is trying to
12 say, "I knew none of these people, so it can't
13 be me, it must be somebody else."

14 MR. GEOLY: He doesn't deny knowing all of
15 them. He denies knowing some of them. And I
16 think it would be fair to ask the officer, "Did
17 he say he knows X and deny if he knows Y?"

18 THE COURT: But if the Government offered
19 testimony saying he knew X or Y, I would allow
20 that. That's an admission against interest.

21 I will not allow exculpatory statements of
22 the defendant to come into the case in this fashion.

23 MR. GEOLY: How can we split it up if they
24 asked him if he knows three people and he says
25 he knows one of them?

1
2 THE COURT: There is no proof in the record
3 that he said he knew anybody.

4 Now, if you want to bring it up and ask him
5 whether he knew X, that's all right with me. But
6 it doesn't mean that if you ask whether he knew
7 X, that you also have a right to ask him if he
8 knew Y and Z.

9 MR. GEOLY: Where you have three people,
10 Judge, it will leave an unfair conclusion in the
11 minds of the jurors.

12 THE COURT: Who is X that he knew?

13 MR. GEOLY: Peter D'Agostino.

14 THE COURT: So you want to show he knew X?

15 MR. GEOLY: Yes, your Honor.

16 THE COURT: You must have a good reason to
17 show that he knew X.

18 MR. GEOLY: Because he does know X.

19 THE COURT: That's all right with me, that's
20 all right with me.

21 MR. GEOLY: So wouldn't it look funny to the
22 jury to have them asked -- for me to ask the agent,
23 did he say he knew X, and then not ask any other
24 questions as to whether he knew Y or Z?

25 THE COURT: I don't care if it looks funny.

1
2 it's not admissible.

3 MR. GEOLY: It's not fair to the defendant,
4 then.

5 THE COURT: You have your objection on the
6 record, and now take an exception to the ruling,
7 and there it is.

8 We will suspend until 2:00 o'clock on this
9 case.

10 (Luncheon recess.)

11 * * *

I N D E X

WITNESS

PAUL SENNETT

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E X H I B I T S

<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
G-1	Substance in plastic bag	16	18
G-2	Substance in plastic bag	20	22
G-3	Envelope with contents	40	41
G-3500-1	23 page report	80	
G-3500-2	Grand Jury minutes	80	
G-3500-3	Three page report	81	
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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----X

4 UNITED STATES OF AMERICA :

5 - against - :

77 CR 129

6 SALVATORE MOGAVERO, :

7 Defendant. :

8 -----X

9
10 UNITED STATES COURTHOUSE
Brooklyn, New York

11 June 22, 1977
12 2:00 P.M.

13
14 B e f o r e :

15 HONORABLE JACOB MISHLER, U.S.D.J.,

Chief Judge

16
17
18
19
20
21
22 HENRI LE GENDRE
Acting Official Court Reporter

Appearances:

A 110

DAVID G. TRAGER, ESQ.,
United States Attorney for the Eastern District
of New York,

By: RHONDA FIELDS, ESQ.,
Assistant U.S. Attorney,
For the Government.

FRANK GEOLY, ESQ.,
For the Defendant.

CROSS-EXAMINATION (Continuing)

BY MR. GEOLY:

Q Agent Cantanese, what time did you arrive in the Carvel Shop parking lot?

A What time did we arrive there?

Q What time did you arrive there?

A Somewhere in the neighborhood of about 6:00 o'clock, quarter to six in the evening.

Q And who was with you in your automobile when you arrived there?

A Special Agent Joseph Barrett.

Q And were you aware of any other agents in the area?

A Yes, I was.

Q Who did you see at that time?

A Who did I actually see?

Q Yes.

A I saw Special Agent Sennett; Frank Torres; Michael Torre and Robert Baker.

Q Who was Baker with, do you remember?

A No, I don't.

Q Now, while you were making your observations, did you see Baker behind you or in front of you at any time?

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A No, not that I recall.

Q Were you stationed in the parking lot or outside?

A I was on the street right next to it.

Q And did you see Baker drive by in an automobile?

A Yes.

Q Was he the driver or the passenger?

A Excuse me?

Q Was he the driver or was he on the passenger side?

A I don't recall.

Q Was it dark at the time?

A Yes, it was evening.

Q Can you tell us how fast Baker's car was moving when you saw it?

A I saw it several times.

Q Go around the block?

A At the time I saw his car I was parked. We had moved from that spot next to the Carvel and we wound up in two different locations. During the evening I believe the surveillance continued until about 8:00 or 8:30 in the evening.

Q Did you see the white Cadillac inside the Carvel parking lot?

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2 A No, I was parked on the same street. We
3 were on the opposite side of the street.

4 Q I believe you stated before that you stayed
5 there about an hour after the red Plymouth left; is that
6 correct?

7 A Hour or better, not in that particular parking
8 spot.

9 Q In that area?

10 A In the area, yes.

11 Q Did the white Cadillac stay there during that
12 period too?

13 A We moved from that spot at--shortly after
14 the red Plymouth pulled out of the parking lot of Carvel,
15 and from that point we took up a position on the avenue,
16 I believe it was Kings Highway, the main street, about
17 a block and a half away from Carvel. We stood there for
18 a while. This is when I saw Robert Baker in his car
19 go by once or twice, maybe more.

20 Q In other words, after the red Plymouth left,
21 you moved and you took up another spot and at this
22 other spot you were still able to see Baker driving
23 around; is that correct?

24 A I saw him go by once or twice. I don't
25 recall how many times.

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Q Could you tell us how many times you saw him go around after the red Plymouth left?

3

4

A Once or twice, I remember seeing the car go by at least once.

5

6

Q Could you tell us how long after the red Plymouth left you saw his car go around?

7

8

A I didn't see it go around, just pass me. I don't remember.

9

10

Q Was it a matter of a couple of minutes?

11

A I don't recall.

12

Q Now, you said that you were in Queens and

13

you saw somebody who you later identified as Mr. Mogavero; is that correct?

14

15

A That is correct.

16

Q Was he alone at that time?

17

A Yes, he was.

18

Q He wasn't with D'Agustino, Moskowitz

19

(phonetic spellings) or anybody else?

20

A Nobody, by himself.

21

Q Did he look like he just came out of a barber shop?

22

23

A His hair was styled nicely. He had a haircut recently.

24

25

Q If I got a haircut yesterday I wouldn't have

1
2 the same gleam that attracted you to him on that day;
3 is that correct?

4 A He looked like he had a haircut recently.
5 Today he appears like he had a haircut recently--I mean
6 within a week or two.

7 Q He looks like he had a haircut within a week
8 or two?

9 A Yes.

10 Q And that was the observation that attracted
11 you to this man in Queens that day?

12 A That was just one of the things. He also
13 was the only person that walked by and passed me again
14 within a couple of seconds.

15 Q Did you interview him when he was arrested?

16 A Talked to him--I interviewed him if you
17 want to term it like that.

18 Q Did you attempt to ask him any questions?

19 A He actually asked me some questions, and we
20 got into a conversation.

21 Q Did you refer to the haircut? Did you ask
22 him, or did he tell you when he had gotten a haircut?

23 A He told me that he had gotten a haircut. I
24 hadn't asked him if he had.

25 Q When did he tell you?

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A He told me that day.

Q Did he tell you where?

MS. FIELDS: Objection.

THE COURT: I thought we went over that, Mr.
Geoly. Objection sustained.

MR. GEOLY: I thought that was the one question
I was allowed to ask.

THE COURT: The one question was the one you
just asked. The one question you were not allowed
to ask was the one that was objected to.

Next question, Mr. Geoly.

CROSS-EXAMINATION (Continuing)

BY MR. GEOLY:

Q Now, did you at any time ask the defendant
to answer any questions?

A I'm sorry.

Q Were you in charge of interviewing the
defendant when he was arrested?

A No, I was not.

Q Do you know if anybody tried to interview the
defendant?

A I assume somebody did.

Q But he was talking to you; is that correct?

A Yes, we had a conversation.

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Q But you didn't attempt to ask him any questions?

A Well, during the course of the conversation questions were asked.

Q By whom, by him or by you?

A By both of us.

Q Did he answer your questions?

A Yes, and I answered his.

THE COURT: Any redirect?

MS. FIELDS: No, your Honor.

THE COURT: You may step down.

Is that the Government's case?

MS. FIELDS: Government rests at this time.

THE COURT: The jury may be excused and we will take a ten or fifteen minute recess and after this recess I will give you my full attention.

(Whereupon jurors were excused from the court.)

THE COURT: Are there any motions, Mr. Geoly?

MR. GEOLY: Yes, Judge. At the end of the Government's case I move under Rule 29 for judgment of acquittal on the grounds the People have failed to make out a prima facie case; specifically, your Honor, I submit there is no independent proof that the defendant at any time joined any conspiracy.

1
2 The fact that what I termed the hearsay statements
3 by Agent Sennett, Moskowitz, and/or D'Agostino,
4 said there were drugs in the car, that there is
5 no basis in fact for that. From the testimony
6 adduced here there is nothing to submit that any-
7 body had any personal knowledge, and I say that
8 would be an indispensable fact as to putting a
9 defendant into a conspiracy.

10 THE COURT: There is no proof acquired that
11 there actually were any drugs at all. You could
12 have a conspiracy without any proof that there were
13 drugs. Motion is denied, and we'll probably move
14 to the other courtroom.

15 (Whereupon a short recess was had.)

16 (After recess.)

17 (Whereupon jurors enter the courtroom and
18 are seated in the jury box.)

19 THE COURT: Mr. Geoly.

20 MR. GEOLY: May I proceed, your Honor?

21 THE COURT: Surely.

22 S A L V A T O R E M O G A V E R O, having been first
23 duly sworn by the clerk of the court, was examined and
24 testified as follows:
25

DIRECT EXAMINATION

BY MR. GEOLY:

Q How old are you, sir?

A I'll be thirty-eight this October.

Q Have you ever been arrested before in your life?

A Never.

Q Have you ever been convicted of a crime?

A No.

Q Are you married?

A Yes.

Q Do you have any children?

A Yes, I have three boys.

Q And how old is the oldest?

A Thirteen.

Q And the youngest?

A Five.

Q Now, where do you live?

A I live at 1711 Dahill Road.

Q What is your business or occupation?

A I've been in construction, cement foundations and excavations all of my life.

Q In the last nine or ten years, whom have you been working for?

1

A For Crossbay Excavators.

2

3

Q Was there a time that you left them for any period of time?

4

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A Yes, I moved upstate for one year. I wanted to get away from the city.

6

7

Q And what type of work did you do when you moved upstate?

8

9

A I was recommended and I worked for the Sisters of the Poor in Albany, and also I worked for St. Mary's Church in Cairo.

10

11

12

Q And you went back to work for Crossbay?

13

A Yes.

14

Q Were you working there in November of 1976?

15

A I was.

16

Q Do you remember where you were working at that time?

17

18

A Widening the Rahway River in Rahway, New Jersey.

19

Q You looked at the record for that day; is that correct?

20

21

A Yes.

22

THE COURT: You have to answer every question vocally so it's recorded.

23

24

Q Tell us how you go to work?

25

A Generally it's by car, because it's a good

1 distance to the construction site.

2 Q And do you generally go alone or do you go
3 with someone else?

4 A That can vary. I might leave my car one
5 evening with someone who is going to work late and go
6 home with someone who is going home at my hour. If the
7 concrete finishers finish and they go home at 4:30 or
8 5:00; basically most of the fellows are from the neigh-
9 borhood and sometimes I'll go in someone else's car.
10 Most of the time I'll go in my own.

11 Q When you are at work, even if you had gone
12 with your car, are there times during the day that your
13 car was used?

14 A Yes--well, I wouldn't say every day, either
15 the engineers use it, some of the superintendents, and
16 other machine operators. In the case of a breakdown they
17 would go by caterpillar and pick up parts, bolts and
18 fuel filters.

19 Q Is it your testimony that on many occasions
20 you have allowed your car to be used by other people on
21 the job?

22 A Yes, that happens several times a week for
23 the last five years, and especially on that job in
24 Jersey I was giving it out two, three times a week.
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Q During the time of November of 1976, did you have a beard at that time, sir?

A No, I did not.

Q Is there any time that you ever had a beard?

A I had a beard one time in my life, and I had it for two months, from April to June of 1976. I grew it with one of the fellows who said, "Let's grow a beard" and I grew it for a period of two months, I shaved it as soon as the hot weather came and I never had a beard ever again.

Q On November 4th of 1976, did you at any time use your car to meet Pete D'Agostino and Frederick Moskowitz to sell drugs?

A No, I did not.

Q Did you at any time allow your car to be used for the transportation of drugs?

A Not to my knowledge, I did not.

Q Did you at any time on November 4th have a sack with drugs in your car?

A No.

Q On November 4th, did you go at about 6:00, 6:15 or thereabouts to a Carvel place located on Kings Highway and McDonald Avenue?

A No, I did not.

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Q Now, do you know Peter D'Agostino?

A Yes, I do know Peter D'Agostino.

Q As a matter of fact, are your employers related to D'Agostino?

A That's correct.

Q Are you related to D'Agostino?

A No, I am not related to him. I have worked for the D'Agostino family for ten years or nine years-- nine years.

Q At that time in November did you know that Peter D'Agostino was involved with drugs?

A No, I did not.

Q Did you socialize with Peter D'Agostino?

A Yes, I did socialize with Peter D'Agostino.

Q Tell us to the extent, how that came about.

A Well, after several years working for the D'Agostinos I ran into Peter who worked himself for sometime with some of the men on some of the jobs, and I got to know Peter's mom--Peter's mother who was operated on a serious heart problem, and I went to the hospital because she was an in-law to the D'Agostino's, and like my mom became friends with this woman, not the greatest friendship, but a continuing friendship, would come over the house for dinner and things like that.

1
2 Q Did you have anything to do with D'Agostino
3 musically?

4 A I was a musician in my early twenties, a
5 professional musician on the East Side in the night spots,
6 then I went into the construction line. Peter was always
7 impressed with my playing and I have one of his instruments
8 over my house.

9 Q Did you ever go with your wife to watch him
10 perform?

11 A I was working as a disc jockey in a dis-
12 cotheque--always involved with music.

13 Q Did there ever come a time that Peter
14 recommended a barber to you?

15 A Yes.

16 Q Can you tell us when that was?

17 A I can't give you the date exactly, but he
18 was always into fashion being someone into music and
19 nightclubs. He said you have to come to this barber,
20 the best barber I ever had, and I went to this barber
21 several times.

22 Q Where was this barber?

23 A I believe it was in the Bayside area in a
24 shopping center.

25 Q Had you gone to him before February 2nd, 1977?

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2

A To this barber? Yes.

3

4

Q And did you go to him on February 2nd of 1977?

5

A Yes, I did.

6

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Q When you were questioned by the Agent, did you tell him that you were driving for a haircut?

8

A Yes.

9

Q How did you get there?

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A Peter had come over the house early that afternoon, I had taken my children to school at 12:00 o'clock lunchtime--12:30, and sometime in the afternoon he said, "Well, I'm going to Queens" and I had needed a haircut. I said, "Drop me off at that barber" which I had already been to two or three times. I went to that barber shop. Peter never returned and I explained that--

18

THE COURT: Strike out "I explained that".

19

Just tell us what you did .

20

A (Continuing) I had my hair cut that afternoon.

21

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Q Now, at any time between September of 1976 and February of 1977, did you ever sit down and discuss or conspire with Peter D'Agostino or Frederick Moskowitz or anyone about selling drugs or possessing of drugs?

A No, sir.

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Q How far did you get in school?

3

A I did two and a half years of high school,

4

then I went to work.

5

Q Did you ever have any job as a chemist in

6

making any pills?

7

A Never in my life.

8

Q Do you know how to make any pills?

9

A No, sir.

10

Q Did you receive an honorable discharge from

11

the Army, sir?

12

A Yes, I did, sir.

13

MR. GEOLY: I have no further questions.

14

THE COURT: Are you prepared to cross-examine?

15

MS. FIELDS: Yes.

16

CROSS-EXAMINATION

17

BY MS. FIELDS:

18

Q Now Mr. Mogavero, you stated on February 2nd

19

you went to get your hair cut; is that right?

20

A Yes.

21

THE COURT: You have to speak a little louder.

22

Q On February 2nd, you went to get your hair

23

cut; is that correct?

24

A That is correct.

25

Q And you stated that this is a barber shop that

1

2 you had been to several times?

3

A Yes.

4

Q Where is this barber shop located?

5

A I believe it's Bayside. I was brought there
6 by Peter. I believe it's called the Bayside Mall.

7

Q And it's in Bayside?

8

A That is correct.

9

Q What is the name of the barber shop?

10

A It's called Paul's Hairstyles or Paul's Barber
11 Salon--I know it's Paul's.

12

Q And does the same hairstylist cut your hair
13 all the time?

14

A The times I went I believe so, it was one
15 fellow. It might have been once the first time someone
16 else, but it was several times or two times one fellow
17 and that day I remember that person also.

18

Q Who was he?

19

A A European guy called Guy or Guido.

20

Q And you had your hair cut by him at least on
21 two occasions?

22

A Yes, sir.

23

Q At Paul's?

24

A Barber shop or salon, whatever.

25

Q And Mr. D'Agostino had left you off there?

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A Yes.

3

Q You have known Mr. D'Agostino for how many

4

years?

5

A I would say approximately nine or ten.

6

Q And you are close friends with him now?

7

A Yes.

8

Q That's correct?

9

A Yes.

10

Q What kind of a car does he drive?

11

A I know he had a white Cadillac; before that

12

a sports car.

13

Q He had a white Cadillac in November of 1976;

14

is that correct?

15

A Yes, I believe so.

16

Q Now, you live at 1711 Daihill Road in

17

Brooklyn?

18

A Yes.

19

Q And you own a 1971 red Plymouth?

20

A Yes.

21

Q And the license plate number is 375 XWJ?

22

A Yes.

23

Q What time do you get off from work?

24

A Quitting time is 4:30. If there are tools to

25

be put away or if you are driving a caterpillar in from

1
2 one end of the job to another, which might be several
3 blocks, it can take between--quitting time 4:30--I
4 might leave a quarter to five, I might leave 5:00.

5 THE COURT: You were working on that day
6 February--

7 MR. GEOLY: I believe the date was November.

8 THE WITNESS: You're talking about the day
9 that Peter dropped me in Queens?

10 Q In November.

11 THE COURT: Oh, November?

12 THE WITNESS: Yes. We were working in
13 November, it was nearing the end.

14 Q And you would have gotten off work around
15 4:00 or 4:30?

16 A Never 4:00, because in that excavation the
17 foreman don't permit that. When you are driving the
18 heavy equipment it's 4:30 the earliest, that's definite.

19 Q Were you home on the evening of November 4th?

20 A Yes, I was.

21 Q And were you home at approximately 9:00
22 o'clock?

23 A I know that I would be home--would I be
24 permitted to explain something?

25 THE COURT: Tell us whether you recall a

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specific date, if you don't then tell us whether you are testifying from what you usually do.

A I recall that I get home and have my supper and usually I would be with my children or my wife unless I would visit an in-law or a friend.

Q Do you remember November 4th?

A To the best of my recollection--remembering that date--I could say I remember it like any day that I worked in November. We might have stopped sometime with some of the foremen at a White Castle just before the Goethals Bridge and went home. I may not have stopped that day. I'm not saying that I did.

Q But you don't remember specifically whether you were home that day at 9:00 o'clock?

A Well, I couldn't say that that I specifically remember being home.

Q Have you ever been to the Carvel Shop that's on Kings Highway?

A Yes, I have been there.

Q And that's about two or three minutes from your home; is that correct?

A That is correct.

Q Now, will you tell us whether or not you went to a wedding in November of 1976?

1
2 A Yes, I did go to a wedding. It was my niece,
3 my niece's wedding at 86th Street in Brooklyn, the
4 Imperial--anyway, she got married November 28th or 27th.

5 What date do you have down?

6 THE COURT: Don't ask questions, just try to
7 answer the question that's asked and don't volunteer
8 any information.

9 THE WITNESS: I'm sorry.

10 CROSS-EXAMINATION (Continuing)

11 BY MS. FIELDS:

12 Q Is it a fact that before that wedding you
13 had a conversation with your wife concerning cutting off
14 your beard before the wedding?

15 A No, but--

16 THE COURT: Is the answer no?

17 THE WITNESS: No.

18 THE COURT: If you can't answer a question
19 yes or no say you can't answer it yes or no. If
20 the question calls for a yes or no answer please
21 answer it that way.

22 BY MS. FIELDS:

23 Q Where does Mr. D'Agostino live?

24 A Peter lives in Bayside, Queens.

25 Q He lives in Bayside, Queens?

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A Whitestone--I think it's Whitestone.

Q Do you know the address?

A No, I don't. I know it's some avenue, 20th or 14th Avenue, but not the address.

Q Would it be 20th Avenue?

A Yes.

Q And that's not Riverside Apartments, is it?

A I don't know. I know that he lives in a private home.

Q That's not in Bayside, it's not an apartment. He does not live in an apartment, is that right?

A No, he lives with his mom.

Q And the Bayside Shopping Mall is where you got your hair done?

A Yes.

Q And the Bayside Shopping Mall is several blocks away from the Riverside Apartments; is that correct?

A If it is I'm not sure.

Q Approximately what time did you get your hair cut, Mr. Mogavero?

A I honestly don't recall the hour. I know it had to be in the afternoon, it was light.

Q Was it close to lunchtime, after lunchtime?

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A I took my boy to school, I walked him up the block--my smallest one. I would say after lunch.

4

5

Q And you were not working on that day; correct?

6

A No.

7

8

MS. FIELDS: That will be all at this time, your Honor.

9

THE COURT: Any redirect?

10

MR. GEOLY: No further questions.

11

THE COURT: Any further questions?

12

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MR. GEOLY: I didn't expect it to go this quick. I have my other witnesses on tap for tomorrow.

15

THE COURT: The jury may be excused.

16

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(Whereupon the jurors were excused from the courtroom.)

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MR. GEOLY: Originally the Government says they would take a day when I spoke to him. I told them all tomorrow to be ready, tomorrow morning. We were ready to start our case tomorrow. We put him on this afternoon, and they are working people and we told them for tomorrow.

24

THE COURT: How many witnesses do you have?

25

MR. GEOLY: I have three or four character

1
2 witnesses and two of the character witnesses will
3 also testify as to the job, plus possibly another
4 witness.

5 THE COURT: All right, we will have to
6 suspend the trial.

7 Seat the jury.

8 (Whereupon jurors reenter the courtroom are
9 now seated in the jury box.)

10 THE COURT: We are going to suspend early
11 today. The jury is excused. Please don't talk
12 about the case when you reassemble tomorrow.
13 Please don't discuss it amongst yourselves.

14 Again, first register downstairs, then come
15 to the jury room adjoining this courtroom.

16 The case will continue promptly at 10:00
17 o'clock. I hope you all get here on time. I know
18 you were here on time today but I couldn't start
19 on time, but I hope to be able to start promptly
20 at 10:00 o'clock tomorrow.

21 There is an outside chance that the case may
22 be finished tomorrow and we charge the jury, if
23 that happens, you may be here until 6:00 o'clock
24 or maybe even 6:30. I don't keep a jury beyond
25 6:30. If we don't agree on a verdict we suspend and

1
2 you come back tomorrow morning, so you might want
3 to tell the folks back home it's possible you'll
4 be slightly delayed tomorrow.

5 (Whereupon jurors were excused for the day
6 in this matter.)

7 THE COURT: Do you have your request to charge?

8 MR. GEOLY: I have some.

9 THE CLERK: The defendants request to charge
10 marked Court Exhibit 2.

11 THE COURT: I'll ask you to wait a few
12 moments until the jury has left the building, and
13 please come in on time tomorrow. I hope to start
14 on time and I think you should prepare your
15 summations because there is a possibility that
16 the case will finish early tomorrow and I'll have
17 an opportunity to charge; if I have an opportunity
18 I will.

19 MS. FIELDS: Would you like for us to prepare
20 a two-count indictment with counts one and four?

21 THE COURT: It might be a good idea. If
22 they ask for a copy of the indictment we might
23 submit that. I don't give it to the jury unless
24 they ask for it. In the last trial both lawyers
25 agreed that the jury had it, and the jury had it

1
2 all during the trial not only at the charge, but
3 you read the charge to them once, I'll read it
4 again in my charge. You could read it again in
5 your summation. I will not give it to the jury
6 unless the jury asks for it.

7 (Whereupon court stood in recess in this
8 matter for the day.)
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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA :

5 - against - :

77 CR 129

6 SALVATORE MOGAVERO, :

7 Defendant. :

8 -----x

9
10 UNITED STATES COURTHOUSE
11 Brooklyn, New York

12 June 23, 1977
13 10:00 A.M.

14 B e f o r e :

15 HONORABLE JACOB MISHLER, U.S.D.J.,

Chief Judge.

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17
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24 HARRY RAPAPORT
Acting Official Court Reporter
25

1 **Appearances:**

2

3 **DAVID G. TRAGER, ESQ.,**
4 **United States Attorney for the Eastern District**
5 **of New York,**

6 **By: RHONDA FIELDS, ESQ.,**
7 **Assistant U.S. Attorney,**
8 **For the Government.**

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10 **FRANK GEOLY, ESQ.,**
11 **For the Defendant.**

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M O R N I N G S E S S I O N

(June 23, 1977)

(The following takes place out of the presence of the jury.)

THE COURT: Are we sure we can finish this today?

MR. GEOLY: My witnesses are short, your Honor. It depends on what they do.

THE COURT: Do you think you will have rebuttal today?

MS. FIELDS: At this time I don't think so, your Honor.

THE COURT: We have a juror missing, Mr. Frizi. If he doesn't show up we have one alternate and I will replace that juror with the one alternate. I think I can charge the jury today, so I will replace the juror.

MR. GEOLY: Would you want to wait a few minutes?

THE COURT: We called downstairs to see if he checked in, and we asked the jury commissioner to call his home to see if he left.

I don't think I received any requests to charge from you.

MR. GEOLY: Yes, your Honor.

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THE COURT: That's right, I didn't go over it.

MS. FIELDS: At this time may the Government submit supplemental requests to charge, a copy of which was given to Mr. Geoly?

THE COURT: All right.

THE CLERK: So marked Government's Exhibit 3.

THE COURT: Did you give the jury menus?

THE CLERK: Yes.

THE COURT: We asked to give the jurors menus on the expectation that I will charge them before lunch.

MS. FIELDS: Yes, sir.

THE COURT: Are your witnesses here?

MR. GEOLY: Yes, your Honor.

THE COURT: All right.

Bring the jury in.

(The jury enters the courtroom and the following takes place in open court and in the presence of the jury.)

THE COURT: Please call your next witness, Mr. Geoly.

MR. GEOLY: Richard Pachuta.

1
2 R I C H A R D P A C H U T A, called as a witness by
3 the defendant, having been first duly sworn by the clerk
4 of the court, was examined and testified as follows:

5 THE CLERK: State your name, please and
6 spell it for the record.

7 THE WITNESS: Richard Pachuta, P-a-c-h-u-t-a.

8 DIRECT EXAMINATION

9 BY MR. GEOLY:

10 Q Mr. Pachuta, how old are you, sir?

11 A Twenty-nine years old.

12 Q Are you married, sir?

13 A Yes.

14 Q Do you have any children?

15 A No.

16 Q What do you do for a living?

17 A I am a civil engineer and I work for a con-
18 struction company.

19 Q And have you at times worked with Salvatore
20 Mogavero?

21 A Yes. On and off for the past six years.

22 Q How long do you know him?

23 A Six years.

24 Q Have you socialized with him? Have you gone
25 out with him socially on occasions?

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A On occasions.

Q Do you know other people who know him?

A Yes.

Q Have you gone hunting with him?

A Yes.

Q Okay.

Can you tell us what his reputation, what you think of him for honesty, truthfulness and law abiding?

THE COURT: They are two separate questions.

Q Can you tell us what you think of him as being a truthful person, as being law abiding and being honest?

A I know him as a family man. I know him as a father.

THE COURT: No, strike that.

Q You have to give me--

THE COURT: Answer the question, please.

What is your opinion of him as being truthful, as being a law abiding citizen?

THE WITNESS: Yes. He is truthful. Yes, he is a law abiding citizen.

THE COURT: Anything else you would like to ask him, Mr. Geoly?

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BY MR. GEOLY:

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Q Can you tell us what his reputation is amongst
other people?

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A As a good person.

6

7

Q Have you ever heard anything bad said about
him?

8

A No.

9

MR. GEOLY: Thank you.

10

I have no further questions.

11

THE COURT: Cross-examination.

12

MS. FIELDS: No questions, your Honor.

13

THE COURT: You may step down.

14

Next witness.

15

MR. GEOLY: At this time I call Mrs. Mogavero.

16

17

THE COURT: Would you please come forward
and stand right over there.

18

19

THE CLERK: Face me and raise your right
hand.

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22

F R A N C A M O G A V E R O, called as a witness by
the defense, having been first duly sworn by the clerk
of the court, was examined and testified as follows:

23

THE CLERK: State your name, please.

24

25

THE WITNESS: Franca Mogavero, F-r-a-n-c-a,
Mogavero.

DIRECT EXAMINATION

BY MR. GEOLY:

Q Mrs. Mogavero, are you married to Salvatore Mogavero?

A Yes.

Q How long have you been married to him?

A Fourteen years.

Q And do you have any children?

A Three children.

Q How old are they?

A One is thirteen, nine, and five years old.

Q Now, do you remember November of last year?

A Yeah.

Q Do you remember February of last year when your husband was arrested?

A Yes.

Q Now, do you remember in November right around Election Day on November 4th, whether your husband had a beard at that time?

A My husband had no beard at that time.

THE COURT: You asked if she remembered February of last year, February 1976?

MR. GEOLY: I meant February of this year and November of 1976, Judge.

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THE COURT: Better refrain the question
and make sure the witness understands.

Q Your husband was arrested in February of
1977; is that correct?

A Yes.

THE COURT: This past February; is that
correct?

THE WITNESS: Yes.

BY MR. GEOLY:

Q And you remember the November before that,
November 1976?

A Yes.

Q Did your husband have a beard in November
of 1976?

A No.

Q Now, to your knowledge did your husband in
November of 1976 or at any time about then have a red
sweatshirt?

A No, no red sweatshirt.

Q Now, do you remember the date that your
husband was arrested?

A Yes.

Q Can you tell us about what time he left the
house on that date?

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A When they took him?

3

Q No. During the day--did there come a time during the day your husband left the house?

4

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A Yes, he left the house.

6

Q Did he leave to go someplace?

7

A Yes, he left and he went to get a haircut.

8

Q And was that on the day he was arrested?

9

A No.

10

Q Was that on the date the police--the cops came that night?

11

12

A Yes.

13

Q It wasn't the day he was arrested?

14

A Yes.

15

Q Now, did he tell you where he was going to get a haircut?

16

17

MS. FIELDS: Objection, your Honor.

18

THE COURT: Objection sustained.

19

A In Queens.

20

THE COURT: Strike it out. The jury is to disregard it.

21

22

Q Did he leave with anybody that you knew to get a haircut?

23

24

A Yes. He left with Peter.

25

Q Did you know Peter D'Agostino at that time?

A Yes, we know Peter many years.

MR. GEOLY: Okay.

I have no further questions.

THE COURT: Ms. Fields.

CROSS-EXAMINATION

BY MS. FIELDS:

Q Mrs. Mogavero, do you own a car?

A Me?

Q Yes.

A My husband does, not me.

Q What kind of a car is that?

A Now?

Q What kind of a car do you have now?

A A Fiat.

Q What kind of a car did you own in 1976?

A We had a red Fury.

Q Excuse me?

A A Fury, what is it, a Ford or an Oldsmobile.

Q A red car?

A Yes.

Q Would it be a Plymouth?

A Plymouth, yes.

Q And it would have been an older Plymouth,

1971 Plymouth?

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A Yeah, maybe.

Q Mrs. Mogavero, you did know Peter D'Agostino, you stated; is that correct?

A Yes.

Q How long does your family know him?

A We know Peter about fifteen years. We know Peter a long time.

Q Are you and your husband very close friends with him?

A Him and his mother and his sister, his father.

Q Do you know what kind of a car Peter D'Agostino had in 1976?

A He used to come around with a white car, I think it was a Cadillac.

Q A white Cadillac?

A Yes.

Q Can you tell me whether or not you remember November the 4th at all?

A November 4th, yes.

Q Do you remember what you did that day?

A He came over the house.

Q About what time did he come over to your house on November the 4th?

A It was in the afternoon.

1
2 Q Did he also come to your house during the
3 night?

4 MR. GEOLY: Judge, may I ask at this time
5 when she says, "he", who is she referring to?

6 THE COURT: If you have an objection, make
7 the objection. If you want to argue it, I will
8 excuse the jury. And if there is any confusion,
9 that's what redirect is for.

10 MR. GEOLY: All right.

11 Q And did Peter D'Agostino also come to your
12 house during the night of--

13 MR. GEOLY: I object to the question.

14 THE COURT: Overruled. I will allow it.

15 MR. GEOLY: May I have an objection outside
16 of the jury?

17 THE COURT: The jury is excused. The
18 witness is excused.

19 Please take a position outside the courtroom
20 doors.

21 (The jury leaves the courtroom. The witness
22 leaves the courtroom. The following takes place
23 out of the presence of the jury and out of the
24 presence of the witness.)

25 MR. GEOLY: May we have the question read back

1
2 where she said, did he come to your house, the
3 question before that was not referring to Peter
4 D'Agostino. It's obvious the witness is mistaken,
5 Judge.

6 THE COURT: Then you can always argue that
7 if the Government says she meant Peter D'Agostino.

8 MR. GEOLY: I don't think at this time--
9 the jury should not listen to a whole line of
10 questions. Obviously the woman has a language
11 barrier and she is not understanding what she is
12 saying.

13 THE COURT: Will you please ask her whether
14 it was Peter D'Agostino that came on November 4th
15 in the afternoon.

16 MS. FIELDS: Yes, sir.

17 THE COURT: Seek the jury.

18 Please ask the witness to come in.

19 (The jury and the witness enter the courtroom
20 and the following takes place in open court.)

21 Q Mrs. Mogavero, directing your attention back
22 to November 4th, 1976--

23 A Yes.

24 THE COURT: Do you remember what day of the
25 week it was? Was it on a Saturday, Sunday, or a

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2

day during the week?

3

THE WITNESS: November 4th?

4

THE COURT: Yes.

5

THE WITNESS: It was during the week.

6

THE COURT: Do you remember which day of

7

the week?

8

THE WITNESS: No, I'm not sure.

9

November 4th, wait, it was the day after

10

Election Day, the 3rd is Election Day and November

11

4th is the day after.

12

THE COURT: I will take judicial notice that

13

November the 4th was a Thursday.

14

All right.

15

BY MS. FIELDS:

16

Q Now, Mrs. Mogavero, can you tell us whether

17

or not Peter D'Agostino came to your house on November

18

4th?

19

A November 4th? That date I can't remember that.

20

Q You can't remember November the 4th, all right.

21

Now, Mrs. Mogavero, can you tell us whether

22

or not your husband worked on that day, November the 4th?

23

Do you remember that?

24

A Yes, I think so. He worked.

25

Q Do you remember approximately what time he got

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home on that day?

A He comes home about 6:00 o'clock, 5:30,
6:00 o'clock.

Q Do you remember specifically him coming home
on that day?

A Yes.

Q Can you tell us whether or not he was using
his car on that day?

A No. I don't remember that because he always
used to give the car away. He used to borrow his car.
His boss used to borrow his car. And sometimes he used
to come home without a car and they used to drop him off.

Q And he loaned his car to people he worked
with?

A Yes.

Q Did you meet those people?

A No, not all the time, no.

Q Do you remember on that day whether or not
anyone came to your home?

A Anyone came that day to my home?

Q Yes.

A November 4th?

THE COURT: That was a Thursday. You said
you remember Election Day. Election Day was the

2nd, Tuesday.

THE WITNESS: November the 4th is when those two agents came to take my husband away.

MS. FIELDS: Your Honor, that will be all the questions at this point.

THE WITNESS: The date, I'm confused.

THE COURT: There is no question. If you're confused Mr. Geoly will try to straighten it out.

REDIRECT EXAMINATION

BY MR. GEOLY:

Q How many times did agents come to your home?

A Only once, only once.

Q What day is that? Was that in November or was that in February?

A In February I think it was, February. November was--

THE COURT: Now, look, Mr. Mogavero, your wife is on the stand and you should not indicate by what you do or say off the stand whether you agree or disagree.

THE DEFENDANT MOGAVERO: Yes, your Honor.

MR. GEOLY: I have no further questions, your Honor.

THE COURT: Anything further?

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MS. FIELDS: No, your Honor.

THE COURT: You may step down.

Thank you.

Next witness.

MR. GEOLY: May I call Mr. James McPadden?

May I get the next witness, your Honor?

THE COURT: Please do.

THE CLERK: Stand there and raise your right hand.

JAMES MCPADDEN, called as a witness by the defense, having been first duly sworn by the clerk of the court, was examined and testified as follows:

THE COURT: Would you state your name, please, and spell it for the record.

THE WITNESS: My name is James McPadden, M-c P-a-d-d-e-n.

DIRECT EXAMINATION

BY MR. GEOLY:

Q Mr. McPadden, how old are you, sir?

A I am forty-three years old.

Q Can you tell us about your education, how far did you go in school?

A Completed fourteen years of education, two

1
2 years of college.

3 Q And what is your occupation, sir?

4 A I work as a construction supervisor.

5 Q And in September and November of 1976, for
6 whom did you work for?

7 A Crossbay Excavating.

8 Q And did Mr. Mogavero work with you on a job?

9 A Yes, he did, sir.

10 Q And where was this job you were working with
11 Mr. Mogavero?

12 A It was in Rahway, New Jersey, alongside the
13 Rahway River.

14 Q And can you tell us at what stage of completion
15 the job was in in November of 1976, sir?

16 A We were at the final stages, almost completed.

17 Q Can you tell us what Mr. Mogavero's duties
18 were on that job?

19 A He worked as a machine operator and a laborer.

20 Q Do you know if people on that job at any
21 time borrowed his automobile?

22 A I have on occasion. And he has let other
23 people use it.

24 Q And do you know if there were occasions when
25 Mr. Mogavero came to work being driven there by someone else?

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A Yes, yes, he used to ride with other fellows to work.

Q Do you know on occasions if Mr. Mogavero actually left his car at the job and went home with someone else?

A Yes.

Q Now, sir, I show you these books and ask you if these are books and records kept in the regular course of business by Crossbay Wrecking and Crossbay Excavation?

A Yes. These are the payroll books.

MR. GEOLY: May I have them offered in evidence, your Honor, please?

THE COURT: Any objection?

MS. FIELDS: No, your Honor.

THE COURT: Let them be marked.

THE CLERK: So marked as Defendant's Exhibit

A and B in evidence.

BY MR. GEOLY:

Q Mr. McPadden, I ask you to look in September of 1976.

Can you tell us whether Mr. Mogavero was working in Rahway, New Jersey, in September of 1976?

A Yes.

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THE COURT: Is that a payroll book?

THE WITNESS: Yes, it is, sir.

BY MR. GEOLY:

Q And were you working in Rahway, New Jersey, with Mr. Mogavero in September of 1976?

A Yes.

Q Without looking at the books, do you have any independent recollection of working with Mr. Mogavero in September, October and November of 1976?

A Yes. We worked together consistently.

Q Do the books indicate whether Mr. Mogavero was working on September 2nd and September 15th of 1976?

A Yes.

Q Do they indicate you were working on September 2nd and September 15th of 1976?

A Yes, they do.

Q Now I direct your attention to November 4th of 1976.

Do the books indicate whether you and/or Mr. Mogavero were working on that date?

A Yes, they do.

Q Now, can you tell us how long it takes to get--question withdrawn.

1
2 Now, can you describe the physical layout
3 of the job and what you were doing at approximately
4 November 4th, 1976?

5 A The physical layout of the job was about a
6 half a mile of river work which we were working and
7 trying to complete final stages of site work and pre-
8 paration for finishing.

9 Q Now, were you working at that time on two
10 sides of a river or of a riverbed?

11 A Mostly one side.

12 Q Were you working on the same side as Mr.
13 Mogavero, if you remember?

14 A Yes.

15 Q And how would you remember that, sir?

16 A We only had a few men and it was my job to
17 supervise them and see that they completed the work that
18 was being done. So I was generally with them at this
19 time.

20 Q Now, are there any phones on this site?

21 A Yes. We had a phone in a house that we
22 used for our office.

23 Q Can you tell us in relation to where the work
24 was going on where the phone was?

25 A The phone was located about the center of

1
2 the river and the opposite side of where we were working.
3 Most of the time we had to drive around to get to it.

4 Q In other words, it wasn't within walking
5 distance of where you and Mr. Mogavero were working;
6 is that correct?

7 A No.

8 Q And you say there was only one phone at
9 this site?

10 A Yes.

11 Q And was this a house?

12 A Yes.

13 Q And was there normally somebody in that house
14 at all times?

15 A The majority of the time the timekeeper was
16 there.

17 Q Now, you were working with him in September,
18 October and November.

19 Do you know if in November, specifically on
20 November 4th, around that time, whether Mr. Mogavero
21 had a beard?

22 A No.

23 Q No you don't remember or no he didn't have
24 a beard?

25 A No, he did not have a beard.

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Q Do you remember a time at any time that he had a beard?

3

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A Yes. Back in--back around March, April, he did have a beard. And I had to travel and do some company business and I was away for about a month, and I had come back and I noticed that he had shaved it off at that time. And I had remarked that he looked kind of different to me.

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Q How long have you been working with him?

11

A About three years.

12

Q Have you ever heard anybody say anything bad about him?

13

14

A No.

15

Q Have you ever heard anything said about him about being dishonest?

16

17

A No.

18

Q Or untruthful?

19

A No.

20

MR. GEOLY: I have no further questions.

21

THE COURT: Ms. Fields.

22

CROSS-EXAMINATION

23

BY MS. FIELDS:

24

Q Mr. McPadden, where do you live again, please?

25

A I live in Waldwick, New Jersey.

1
2 Q And you have known Mr. Mogavero for approxi-
3 mately three or four years?

4 A Three years.

5 Q Three years?

6 A Yes.

7 Q Are you friendly with him?

8 A Yes.

9 Q Do you ever visit his home?

10 A Yes, I did.

11 Q And do you know his wife?

12 A Yes.

13 Q Do you know his children?

14 A Yes.

15 Q And you socialize with him?

16 A Yes, I do.

17 Q And you talk to him on the telephone very
18 often; is that correct?

19 A Yes.

20 Q Now, do you have any specific recollection
21 of November 4th, 1976?

22 A No, no specific recollection.

23 Q And the books that you have there, those are
24 the payroll books for your company; isn't that correct?

25 A The company I work for.

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Q Do you make out the books?

A No.

Q And they are made out by the bookkeeper,
the timekeeper?

A Right.

Q Now, could you point out to me the page
relating to the week of November 4th, that November 4th
falls into.

A This here.

Q This would be in Exhibit A, Defendant's
Exhibit A; is that correct?

THE COURT: Does that page have a page number
or any other identifying number?

MS. FIELDS: It would be identified as saying:
Payroll week ending November 10th, 1976.

THE COURT: Your weeks ends on a Wednesday,
your payroll week?

THE WITNESS: Yes. It runs from Tuesday to
Wednesday.

BY MS. FIELDS:

Q Now, this book would indicate the total
number of hours that an individual would work in a day;
is that correct?

A Yes.

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2 Q But it does not indicate the exact times of
3 work; is that correct?

4 A Hours, no, it does not.

5 THE COURT: When do the men check in for
6 work?

7 THE WITNESS: The men normally work from
8 8:00 to 4:30. It's a normal workday. It would
9 probably show it in overtime hours.

10 THE COURT: Does it show overtime for that
11 week or for that day?

12 BY MS. FIELDS:

13 Q Would you point put Mr. Mogavero's name for
14 me, please?

15 A Mr. Mogavero is right here in this book.
16 Here is Mogavero.

17 Q There are two separate books for the same
18 day?

19 A Yes.

20 Q So Defendant's Exhibit B also contains a
21 book for November 10th, 1976?

22 A Yes.

23 Q What is the difference between these two
24 books?

25 A There are two different companies. One is

1
2 reflecting mostly management and one is the men working
3 on the job.

4 Q So, really it's Defendant's Exhibit B is
5 the information, which has the information on the workers;
6 is that correct?

7 A Yes.

8 Q And the Exhibit A is not related to this?

9 THE COURT: Are the jurors able to hear the
10 questions and the answers?

11 (The jury indicates affirmatively.)

12 THE COURT: Do your books indicate there was
13 any overtime for the week ending November 10th,
14 1976?

15 THE WITNESS: No, not in this payroll week.

16 Q So that indicates that every day of that
17 week, that payroll week beginning November 4th or
18 November 3rd, to and including November 10th, there was
19 no overtime?

20 THE WITNESS: That's correct.

21 THE COURT: And the quitting time is 4:30?

22 THE WITNESS: That's correct.

23 MS. FIELDS: That would be all, your Honor.

24 THE COURT: Any redirect?

25 MR. GEOLY: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. GEOLY:

Q Mr. McPadden, you said quitting time was 4:30.

Now, can you tell us what actually that meant?

A That's the time that we would go back to the trailer and change and wash up, prepare to drive home.

Q So, in other words, you wouldn't stop working before 4:30, but what time would you actually leave the job?

THE COURT: Wait.

Is that true? Would you stop, quit working at 4:30 or before?

THE WITNESS: Maybe five minutes.

THE COURT: All right.

Go ahead.

BY MR. GEOLY:

Q What time would you generally leave the job?

A It varies. I had things I would normally do. Sometimes we would stop and get a Coke and coffee so we could stay around and clean up some business and we would be there until 5:00 o'clock.

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2 Q Well, you had testified that around November
3 4th you were in a particular stage of completion in your
4 particular area of the job.

5 A Yes.

6 Q And from where you would stop at 4:30 there,
7 would there be any time lapse until you went to the
8 place where you change your clothes?

9 A No, not really, only a few minutes.

10 Q And you change your clothes in a shack?

11 A Uh-huh.

12 Q Is that correct?

13 A That's correct.

14 Q Now, do you know of your own knowledge how
15 long it would take to get from Rahway, New Jersey,
16 to Dahill Road in Brooklyn?

17 A I have never made the trip. I would only
18 speculate.

19 Q Have you ever gone from Jersey to Dahill Road
20 in Brooklyn?

21 A Yes, I have.

22 Q And any place from near Rahway?

23 A I would speculate it would take forty-five
24 minutes to an hour, depending on traffic.

25 MR. GEOLY: I have no further questions.

1
2 THE COURT: Anything further?

3 RECROSS-EXAMINATION

4 BY MS. FIELDS:

5 Q The only further question, Mr. McPadden,
6 you have no particular recollection of November 4th
7 yourself, do you?

8 A No, nothing specific.

9 Q And you have no particular recollection of
10 what time Mr. Mogavero left on November 4th; is that
11 correct?

12 A He would have to leave with me.

13 Q Just answer the question yes or no.

14 A No.

15 Q Do you have any specific recollection of what
16 time Mr. Mogavero left on November 4th?

17 A No.

18 MS. FIELDS: That's all.

19 THE COURT: Anything further?

20 FURTHER REDIRECT EXAMINATION

21 BY MR. GEOLY:

22 Q Could he have left before you at that time?

23 MS. FIELDS: Objection, your Honor.

24 THE COURT: Objection sustained.

25 MR. GEOLY: I have nothing further.

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THE COURT: You may step down.

Next witness.

Are the exhibits left with you, Mr. Geoly?

THE CLERK: They are on the witness stand,
your Honor.

MR. GEOLY: Does your Honor want them?

THE COURT: No. I wanted to make sure
Mr. McPadden didn't take them with him.

(Witness excused.)

THE CLERK: Face me, please, and raise your
right hand.

J O H N R O N Z I N O, called as a witness by the
defense, having been first duly sworn by the clerk of
the court, was examined and testified as follows:

THE CLERK: State your name, please, and
spell it for the record.

THE WITNESS: John Ronzino, R-o-n-z-i-n-o.

DIRECT EXAMINATION

BY MR. GEOLY:

Q Mr. Ronzino, how old are you, sir?

A Forty-one.

Q Are you married, sir?

A Yes.

Q Do you have any children?

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A One boy.

Q Can you tell us where you live, sir?

A Catskill, New York.

Q And how long--do you know Mr. Mogavero?

A Yes.

Q How long do you know him?

A Twenty-five years.

Q Did there come a time that he ever worked
in your area?

A Yes.

Q And where did he work and for whom?

A Well, he worked for a church in Albany and
he worked for a church in Cairo, and he worked as a
police officer in the--in the Catskills.

Q Have you ever gone hunting with him?

A Yes.

Q Do you remember going hunting with him in
October of '76?

A Yes.

Q And can you tell us what kind of hunting that
was?

A Pheasant hunting.

Q Can you tell us about when the pheasant
season started?

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A I guess it was around the 15th of October, around, something like that.

Q That's the start?

A Yes.

Q And do you remember when in October you actually went with Mr. Mogavero?

A Well, it was somewhere between the 15th and the end of the month.

Q And do you remember if at that time Mr. Mogavero had a beard on?

A No.

Q Now, do you know other people who know Mr. Mogavero?

A Yes.

Q Can you tell us what your opinion of him as being a truthful person, for being an honest person, and being law abiding?

A Very truthful, honest and, you know.

Q Have you ever heard anybody say anything bad about him, about being dishonest?

A No.

MR. GEOLY: I have no further questions.

THE COURT: Ms. Fields.

CROSS-EXAMINATION

BY MS. FIELDS:

Q Mr. Ronzino, do you know whether or not
Mr. Mogavero has ever worn a beard?

A Yes.

MS. FIELDS: That's all, your Honor.

No further questions.

THE COURT: Anything further?

MR. GEOLY: Excuse me, Judge.

REDIRECT EXAMINATION

BY MR. GEOLY:

Q Do you know when he wore the beard?

A No.

Q But you're sure at the time he came hunting
in October of '76 he did not have a beard; is that
correct?

A No. He did not have a beard.

MR. GEOLY: Thank you.

That's all.

THE COURT: You may step down.

Thank you.

(The witness leaves the courtroom.)

THE COURT: Next witness.

MR. GEOLY: Judge, may I have one second to

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2

confer with my client?

3

4

(Whereupon there was a pause in the proceedings.)

5

6

MR. GEOLY: Your Honor, may I get the next witness?

7

8

THE COURT: Yes.

9

(Mr. Geoly exits the courtroom and returns with the next witness.)

10

THE CLERK: Come forward.

11

Face me and raise your right hand.

12

13

G U Y F E R R O, called as a witness by the defense, having been first duly sworn by the clerk of the court, was examined and testified as follows:

14

15

THE CLERK: Would you state your name, please.

16

17

THE WITNESS: Guy Ferro.

18

19

THE CLERK: Guy, G-u-y?

20

THE WITNESS: Yes.

21

THE CLERK: How do you spell your last name?

22

THE WITNESS: F-e-r-r-o.

23

THE COURT: Now, please speak as loud as you can, would you do that.

24

25

THE WITNESS: I no understand too much English.

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THE COURT: What language do you speak?

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THE WITNESS: Italian.

4

5

MS. FIELDS: Your Honor, we have an interpreter upstairs if we can have a couple of minutes.

6

THE COURT: All right, an Italian interpreter.

7

Can't you call on the telephone? Let's save

8

some time.

9

All right, the jury is excused until we

10

get the interpreter.

11

(The jury leaves the courtroom.)

12

THE COURT: Please step down.

13

(A recess is taken.)

14

(The jury enters the courtroom and the

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following takes place in open court and in the

16

presence of the jury.)

17

THE COURT: Swear the interpreter.

18

THE CLERK: Yes.

19

Would you come forward and raise your right

20

hand.

21

(Pietro Morgese duly sworn by the clerk of

22

the court as the Italian interpreter.)

23

THE CLERK: State your name.

24

THE WITNESS: Pietro Morgese.

25

THE CLERK: Spell your last name, please.

1
2 THE WITNESS: Pietro Morgese, P-i-e-t-r-o
3 M-o-r-g-e-s-e.

4 THE COURT: Please swear in the witness.

5 THE CLERK: Please interpret the oath.

6 G A E T A N O F E R R O, having been previously
7 sworn by the clerk of the court in English and having
8 previously stated his name as Guy Ferro, was again
9 sworn by the clerk of the court through the Italian
10 interpreter, and was examined and testified as follows:

11 THE CLERK: State your name and spell it for
12 the record.

13 THE WITNESS: Gaetano, G-a-e-t-a-n-o, Ferro,
14 F-e-r-r-o, also known as Guy.

15 THE CLERK: Fine.

16 seated.

17 DIRECT EXAMINATION

18 BY MR. GEOLY:

19 Q Mr. Ferro, do you understand a little English?

20 THE COURT: You interpret what counsel says.
21 Interpret that the lawyer wants to know. Interpret
22 exactly as follows: Mr. Ferro, do you understand
23 a little English?

24 (Whereupon the interpreter complies.)

25 A (In English) A little bit.

1
2 BY MR. GEOLY:

3 Q Do you feel more comfortable in speaking
4 through the interpreter?

5 THE INTERPRETER: He prefers to make any
6 statement through the interpreter, he said.

7 THE COURT: Mr. Geoly, please get to the
8 testimony.

9 Q Mr. Ferro, do you know Mr. Mogavero?

10 A Yes.

11 Q What do you do for a living, sir?

12 A Barber.

13 Q Where are you located, sir?

14 A Clearview Expressway, 50-08 Bayside.

15 Q Have you ever cut Mr. Mogavero's hair?

16 THE INTERPRETER: He says yes.

17 Q How many times, sir?

18 A Three or four times.

19 Q Do you remember who introduced Mr. Mogavero
20 to you?

21 A A client who used to go to my barber shop
22 before him.

23 Q Would you remember his name?

24 A Pietro.

25 MR. GEOLY: Is that Peter in English?

1
2 THE INTERPRETER: Yes, it's Peter.

3 Q Do you remember hearing--do you remember
4 learning that Peter--Mr. Mogavero--Peter and Mr. Mogavero
5 were arrested?

6 A First, the first--the day before the arrest
7 they come in and get the haircut. And the day after
8 we read it in the newspaper.

9 Q In other words, you read about the arrest
10 the day after in the newspaper; is that correct?

11 A I haven't read the newspaper, but friends
12 that were in the barber shop, they read it.

13 Q Would you know if that was some time in
14 February?

15 A I can remember whether it was the 2nd of
16 February because it was the manager of the barber shop's
17 birthday that day and they came the day after.

18 Q At any rate, before that date did you cut
19 Mr. Mogavero's hair on other occasions?

20 A Yes. The first time he came was last year
21 when I had to shave his beard. He had a long beard and
22 he came in for a shave.

23 MR. GEOLY: Thank you.

24 I have no further questions.

25 CROSS-EXAMINATION

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BY MS. FIELDS:

Q Mr. Ferro, do you remember approximately when he first came in to your establishment?

A I can't recall precisely when it was, but it was during the summer of last year.

Q And he did not return to your establishment until approximately February; is that correct?

A He is coming in and out approximately three or four times. And there was a time elapsed each time he used to come in.

THE COURT: Did you say the first time you performed services on him was in the summer, last summer?

A It was last summer when he came together with this Mr. Pietro.

THE COURT: That was the first time?

THE WITNESS: That's the first time.

THE COURT: When did you shave his beard off?

THE WITNESS: In the summer of last year. I can't remember exactly, but it can be June or July, the summer of last year.

BY MS. FIELDS:

Q And have you cut his hair since you found out he was arrested?

1
2 A I never saw him after it was known that he
3 was arrested.

4 THE COURT: Now, the question is: Between
5 the first time that you cut his hair and February
6 2nd, did you cut his hair between those dates?

7 MR. GEOLY: I object. That's not the
8 question.

9 THE COURT: Wasn't that the question?

10 MS. FIELDS: I had asked if he cut his hair
11 after he found out Mr. Mogavero was arrested.

12 THE COURT: I'm sorry. I misunderstood your
13 question. I tried to interpret your question.

14 MS. FIELDS: That is my next question, your
15 Honor.

16 MS. FIELDS: You cut his hair in all,
17 approximately three or four times; is that
18 correct?

19 THE WITNESS: Yes.

20 Q There were periods of time between each time
21 he came in?

22 A From the first time he came in my barber
23 shop, which was last summer, until he came at randomly,
24 let's say randomly. He didn't specify how many times.

25 MS. FIELDS: Thank you.

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That's all, your Honor.

3

THE COURT: Anything further?

4

MR. GEOLY: No further questions, your Honor.

5

THE COURT: You may step down.

6

Thank you.

7

MR. GEOLY: That is the defendant's case,

8

your Honor. The defendant rests.

9

THE COURT: You may step down.

10

Do you have any rebuttal?

11

MS. FIELDS: No, your Honor.

12

THE COURT: All right.

13

The jury is excused for a few moments and

14

then we will hear the summation by counsel.

15

(The jury leaves the courtroom and the

16

following takes place out of the presence of the jury.)

17

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THE COURT: Did you go over the requests of the defendant, Ms. Fields?

19

20

MS. FIELDS: Yes, your Honor.

21

THE COURT: Do you have any objection to any of them?

22

23

MS. FIELDS: Yes, your Honor.

24

The Government objects to the request to charge concerning conspiracy, that will be request

25

1
2 number two.

3 THE COURT: I didn't hear that.

4 MS. FIELDS: The Government would object to
5 the defendant's request number two, I believe it is.
6 I believe that's the request in which--

7 THE COURT: Well, the part you object to I
8 assume is if you are not convinced beyond a reason-
9 able doubt that the defendant ever possessed a
10 quantity of methaqualone pills you must acquit him.
11 And that refers to count two, I assume. And you
12 are thinking of the conspiracy count?

13 MS. FIELDS: Yes, your Honor.

14 THE COURT: You are saying if he is guilty
15 of the conspiracy charge and the possession of the
16 methaqualone was during that period that he was
17 a member of the conspiracy, then he is guilty of
18 count two?

19 MS. FIELDS: No, your Honor. He would not
20 be guilty of count two if they did not find he
21 did not possess the methaqualones. But the
22 Government feels that that charge should not go
23 to count one, the conspiracy charge.

24 THE COURT: I am not sure that it refers only
25 to count one.

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MR. GEOLY: Judge, I think that.

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THE COURT: The charge on conspiracy is taken verbatim as I see it from Devitt and Blackman.

5

MR. GEOLY: On my request, your Honor?

6

THE COURT: This part of it.

7

8

MR. GEOLY: That was from a charge that Judge Dooling used.

9

10

THE COURT: So what you added was the first three paragraphs of the first page?

11

MR. GEOLY: Yes, your Honor, approximately.

12

13

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15

THE COURT: I think it's true only because it is only evidence in the case connecting this defendant with the conspiracy. So why shouldn't I say it?

16

17

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21

If he wasn't there, if there was a mis-identification--and you have not proved beyond a reasonable doubt the defendant was there at the Carvel parking lot--then there is no other evidence that he became a member of the conspiracy, and you must find him not guilty; isn't that true?

22

23

MS. FIELDS: If he was not there, your Honor, yes.

24

25

THE COURT: Please sit down there in the back. So I am ready to charge that. As a matter of

1
2 fact, I was going to suggest to you that I don't
3 give the Pinkerton charge, because it's rather
4 confusing. I would like to give the Pinkerton
5 charge when it's requested, and when there is no
6 evidence that the defendant participated in the
7 substantive charge, and there it makes sense. But
8 I would rather give the substantive charge separately
9 because here the Government's position is he is
10 the man who had the qualudes in the back of the car.

11 MS. FIELDS: Yes, your Honor.

12 THE COURT: And if they don't believe that
13 beyond a reasonable doubt, the Government hasn't
14 proved its case. That's the only issue in the
15 case really.

16 MS. FIELDS: Yes, sir.

17 THE COURT: I will approve request number one
18 and two, and I don't know if you have any others.

19 Well, you have everything thrown into request
20 number two, presumption of innocence, proof beyond
21 a reasonable doubt. It should be separately numbered.

22 MR. GEOLY: I'm sorry, Judge. I am breaking
23 in a new girl and when I put it together she didn't
24 separate it.

25 THE COURT: Well, she certainly is a great

1
2 Xeroxer.

3 The charge on character evidence I will give.

4 The rest of it I give anyway generally.

5 Did you take all of Judge Dooling's charge
6 and Xerox it?

7 MR. GEOLY: No, Judge. I took out some
8 parts I didn't like. It was a very similar case,
9 your Honor.

10 THE COURT: All cases are similar.

11 MR. GEOLY: It was very similar factually.

12 THE COURT: All right.

13 The Government's requests now.

14 There certainly can't be any objection to
15 number one, two and three. And request number four,
16 that's exactly what I am willing to do, except
17 I will tailor it to meet these facts and circum-
18 stances and I am prepared to say that the Government
19 must prove beyond a reasonable doubt that this is
20 the individual who came to the parking lot in the
21 red car and that he had methaqualone tablets in
22 his possession and that he intended to turn it over
23 to the prospective buyers, something like that.
24 Because that is the case. If you don't believe
25 that, then the Government has failed.

1
2
3 FELLOS: Yes, your Honor.

4 THE COURT: I intend to say what you say
5 specifically in count five.

6 I agree with count six, but I won't charge
7 it. You can argue it, that conspiracy can be
8 proved by showing unrelated and disconnected acts.

9 Do you want me to charge seven really, on
10 chain conspiracy? I do that at times, usually
11 when the defendant charges in the minor role,
12 I try to show that all the Government has to prove
13 is that he understood there were others in the
14 chain. But I don't think that's appropriate to
15 charge that in this case. I believe it's true
16 and you can argue it, but I will not charge it.

17 MS. FIELDS: All right, your Honor.

18 THE COURT: You don't have any objections
19 to the rulings I am making so far?

20 MR. GEOLY: No, your Honor, no objection.

21 THE COURT: I approve of eight.

22 Request number nine is correct. Once a
23 conspirator joins a conspiracy, he is liable for
24 all the acts of the co-conspirators from the time
25 of its inception.

1
2 MR. GEOLY: I believe I have that in my
3 charge also.

4 THE COURT: Frankly, I don't know if I will
5 give it because really in this case the substantive
6 count coincides exactly the same as the con-
7 spiracy count as far as the defendant is concerned.
8 You don't show any other acts that--of course, yes,
9 you do show the prior transactions that he had
10 with Moskowitz, but you don't charge him with that.

11 MR. GEOLY: That was with--

12 THE COURT: Not with him. But if the
13 Government charges him with those, it would make
14 sense to charge him with all the acts. And if
15 he was a member of a conspiracy at that time he
16 could be charged with the substantive acts. But
17 I don't think I would charge that.

18 MS. FIELDS: If I may, your Honor, we would
19 have--we would like to make it clear to the jury
20 that if they do in fact find he was a member of
21 the conspiracy, that the other transactions are
22 part of that conspiracy.

23 THE COURT: Yes. The statements and de-
24 clarations will be charged to him, yes. But there
25 is no charge on the substantive offenses there,

1
2 so it will not have the same effect as though
3 charged in the indictment. That's what I mean.

4 MS. FIELDS: Yes, your Honor.

5 THE COURT: Request number eleven cites the
6 Code.

7 I say everything as to essential elements.
8 I think I will charge first that the Government
9 must prove that he possessed the methaqualone on
10 November 4th in the parking lot; two, that he
11 possessed it knowingly and with intent to dis-
12 tribute it. And I will define what distribution
13 is.

14 I don't think I will give the charge on
15 possession. I might give the charge on actual
16 possession, because that's what you say, that he
17 had it in his possession. So there is no sense
18 in charging it, charging them on constructive
19 possession.

20 MS. FIELDS: Yes, your Honor.

21 THE COURT: I find thirteen is correct.

22 Well, you do ask for a definition of
23 possession, so maybe I should give it.

24 All right.

25 Are you ready for summation?

1
2 MS. FIELDS: Yes, your Honor.

3 THE COURT: Wait. You have a supplemental
4 charge, and it's about the defendant taking the
5 witness stand, as I recall it.

6 Character evidence I will give. I will say
7 the personal opinion under our new rules expressed
8 by the witness, and the reputation by the witness,
9 are things they must consider.

10 I will not charge them that the defendant
11 may have misled them into believing he was a man
12 of good character. There was no evidence of that,
13 so that I will deny.

14 And on the defendant's testimony, I know that
15 other judges charge a deep personal interest that
16 the defendant may have in the terms of his case
17 should be considered in determining the credibility
18 of his testimony. And you don't cite United States
19 against Hiss. You go back all the way to 1895 for
20 that. But I always felt that was an appeal to the
21 jury to recognize the difficult position the
22 Government was in and the difficulty in cross-
23 examining a defendant and to recognize that the
24 defendant is probably lying. I just say he is to
25 be judged by the same standards of any other witness.

1
2 And within those guidelines I say, take into con-
3 sideration the interest the witness has, instead of
4 saying the defendant, the interest the witness has
5 in the outcome of the case. And you can argue to
6 the jury that he had a deep personal interest and
7 they can take that into consideration.

8 MR. FIELDS: Yes, your Honor.

9 THE COURT: Are we ready now?

10 MR. GEOLY: Do you want to put on the record
11 at the end of the Government's case I make a
12 Rule 29 motion?

13 THE COURT: Absolutely.

14 MR. GEOLY: After the entire case, I move
15 for an acquittal on the ground that the People failed
16 to prove him guilty beyond a reasonable doubt,
17 and incorporating all the motions and reasons I
18 have reiterated at the end of the People's case.

19 THE COURT: Motion denied.

20 I think it's a question for the jury whether
21 this man was the man with the beard or not.

22 Seek the jury.

23 (The jury enters the courtroom and the follow-
24 ing takes place in open court and in the presence
25 of the jury.)

M I S H L E R, U.S.D.J., C H I E F J U D G E

(THE COURT CHARGES THE JURY AS FOLLOWS:)

THE COURT: Madam Foreman and ladies and gentlemen of the jury:

The case is over except for my charge to you, which in effect is an instruction on the applicable law, and then your deliberations and the verdict.

The lawyers have completed their work and I am about to charge you on the applicable law.

I previously called your attention to the different roles that the participants in a criminal trial play. This is called an adversary proceeding. It is called that because the lawyers are adversaries. They take competing positions on issues of fact.

The obvious substantial issue of fact that has been called to your attention by the lawyers is the identification of the individual who drove a motor vehicle, concededly owned by the defendant, to the Carvel parking lot. Ms. Fields, on behalf of the Government, arguing that it was the defendant Salvatore Mogavero; and Mr. Geoly, on behalf of the defendant, arguing that it was some other person. On that issue and on the other

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2 issues in the case that I will discuss, the evidence
3 was offered. And the purpose of an adversary pro-
4 ceeding is because the parties are adversaries and
5 they take different sides on an issue and develop
6 the evidence in the case.

7 The Judge and the jury are judges of the law
8 in the first case, and the jury of the facts in the
9 other case. But that distinguishes the role of the
10 Court and jury from that of the lawyers. The lawyers
11 are protagonists. They represent clients and they
12 perform best when they represent the clients with zeal.

13 As between the Court and the jury, the function
14 is distinct and different. The jury is the sole
15 judge of the facts. You and you alone decide whether
16 the government proved beyond a reasonable doubt
17 that it was this defendant that drove the red
18 Plymouth Fury to the Carvel parking lot on November
19 4, 1976, among other issues in the case. But you
20 will decide that fact question in accordance with
21 the law as the Court charges it.

22 You as the jurors have the obligation of
23 accepting the law as the Court charges it without
24 question, and applying the law as the Court charges
25

1
2 it to the facts as you find them to be, you will
3 decide the guilt or innocence of the defendant on
4 the two counts of the indictment.

5 We start the charge of the law with the
6 well known and accepted principle that the defendant
7 is assumed to be innocent of both counts in the
8 indictment. That means that you must conclude at
9 the outset of the trial that the defendant is
10 innocent of both charges. That is a strong time-
11 honored presumption in Anglo-American Law. It
12 means that you must conclude throughout the trial
13 and throughout your deliberations that the defendant
14 is innocent of the charges. That presumption alone
15 is enough to acquit the defendant. It fails or
16 becomes ineffective only if and when the Govern-
17 ment proves the defendant's guilt beyond a reason-
18 able doubt.

19 I like to analogize the principle to what we
20 know as a Scotch Verdict. You heard the term
21 Scotch Verdict. In Scotland there are three
22 verdicts: Guilty, not guilty and not proved. In
23 this country there are only two verdicts, guilty
24 and not guilty. Not guilty includes not proved.

25 A reasonable doubt is the kind of doubt a

1
2 reasonable person would have after reviewing all
3 the evidence in the case. A reasonable doubt
4 is not a vague or speculative, imaginary doubt.
5 A reasonable doubt is the kind of doubt that would
6 cause an individual to hesitate to act in the most
7 important of his or her own affairs.

8 Proof beyond a reasonable doubt is therefore
9 proof of such a convincing character that you would
10 be willing to rely and act upon it un-
11 hesitatingly in the most important of your own
12 affairs. The Government has a heavy burden, but
13 it is not to prove the defendant's guilt beyond
14 all doubt. There is a modifying adjective, and that
15 is reasonable. The Government's burden is not
16 to prove that every bit of evidence offered during
17 the trial is true beyond a reasonable doubt.
18 The Government's burden is to prove all the
19 essential elements of the crime charged beyond a
20 reasonable doubt. And I will charge you later on
21 what the essential elements of the two crimes
22 charged in this indictment are.

23 The defendant is not required to offer
24 any evidence tending to show his innocence. The
25 defendant has the right to rely on the failure of

1
2 the Government to prove his guilt beyond a
3 reasonable doubt.

4 A reasonable doubt may arise not only from
5 the evidence in the case, but from the failure to
6 produce evidence that you feel should have been
7 brought into the case.

8 Neither the number of witnesses called or
9 the exhibits that are marked in evidence is the
10 test of the Government's proof. It is, rather,
11 the quality of the proof.

12 What is the evidence in the case?

13 The evidence in the case is the sworn testimony
14 of the witnesses, regardless of who called the
15 witnesses; both the direct and cross and redirect
16 and recross; the exhibits that are marked in
17 evidence; the facts which have been admitted or
18 stipulated to, for example, the defendant stipulates
19 if a Government chemist were called, that it would
20 find the three exhibits marked in evidence were
21 methaqualone, or as commonly described, qualudes;
22 the facts which have been judicially noticed.
23 At one point I judicially noted that November 4,
24 1976 was a Thursday.

25 I think it's important for the jury to

1
2 understand what is not evidence. Statements made
3 by the lawyers in their openings and in their
4 summations is not evidence. An opening is designed
5 to alert the jury as to the testimony that is to
6 come during the trial so that the jury may more
7 easily follow the testimony.

8 The summations are designed to focus on the
9 testimony that the lawyers feel is most important,
10 and to direct a jury's consideration to theories
11 of exculpability on behalf of the defendant, which
12 means that Mr. Geoly argued that the Government
13 failed to prove guilt and theories of inculpability
14 on behalf of the defendant, which means that
15 Ms. Fields argued that the Government proved guilt
16 beyond a reasonable doubt.

17 Certain^{it} is that you cannot accept both
18 arguments. But they are leads to the truth and
19 your function indeed is a search for the truth.
20 One theory or one argument may appeal to you.
21 Of course, you can embrace it. And, of course,
22 if an argument seems not to be based on the facts
23 or logic, you can reject it. The
24 point is that these are methods employed in the
25 law to help you in arriving at a verdict.

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Statements by the Court is not evidence.

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At this point I might say you should not attach any special significance to questions that the

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Court asked. At times I asked questions because there is a certain confusion in my own mind, and

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8

I ask the question in the hope that it will explain something about the circumstances, the thought

9

10

being that you, too, may have been confused and it might be helpful to you.

11

12

At times objections to questions were sustained.

13

14

You may not speculate on what the answer might have been had the Court permitted the witness to

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answer. I ruled as a matter of law. And since I found that as a matter of law it is not admissible, it is excluded.

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I might also say that the lawyers have a duty to make objections where they find a question is improper. You should not charge it against the respective clients if you find that you might have resented or become a little irritated because you found there were objections and you think the lawyer shouldn't have objected.

As I say again, the lawyer has an obligation to protect the interests of his client, and in this

1
2 case her client, the Government, too, in making
3 objections.

4 At times answers were stricken from the
5 record. And as I directed the court reporter to
6 strike the answer from his notes, so I direct
7 you not to consider it, to figuratively strike
8 it from your mind and memory and from your con-
9 sideration.

10 Evidence is the method by which a disputed
11 fact is proved or disproved. Evidence is generally
12 classified as direct evidence or as indirect
13 evidence, and sometimes called circumstantial
14 evidence.

15 The testimony of the witness as to what
16 that witness saw or heard is called direct evidence.

17 Circumstantial evidence, however, is proof of
18 a disputed fact by the jury drawing an inference
19 from the establishment of circumstances from which
20 the inference may reasonably be drawn.

21 I will give you an example of this. Let's
22 assume you were sitting here as a jury in a personal
23 injury case. Mrs. A claims that Mr. B passed a
24 stop sign without stopping and struck her.

25 In this hypothetical, let's assume that my

1
2 courtroom deputy, Mr. Adler and myself were standing
3 on the corner where the stop sign was erected at
4 the time and place of the alleged accident and
5 injury.

6 Now, if I were facing the stop sign and the
7 street, I would be in a position to testify
8 directly as to that disputed fact.

9 Let us assume I was facing the street at
10 that time, and let's assume that my courtroom
11 deputy had his back to the sign and his back to the
12 street. If I were called to testify I might say,
13 "Well, this motor vehicle was traveling down the
14 street at 70 miles an hour and I saw it pass the
15 stop sign without stopping and strike Mrs. A."

16 If Mr. Adler were called to the witness
17 stand he couldn't give direct testimony on that
18 issue, again, the issue being whether or not
19 the defendant stopped his motor vehicle at the
20 stop sign before proceeding. He could nevertheless
21 testify to circumstances from which the jury might,
22 using their good common sense and experience,
23 draw a reasonable inference that the motor vehicle
24 failed to stop at the stop sign before proceeding.
25 He might say, "Well, I was talking to the judge and

1
2 I saw the car come into the area of my peripheral
3 vision, it was proceeding at about 70 miles an
4 hour, it passed behind me, I lost sight of it
5 for two or three seconds, and for about 150 feet.
6 And I turned to my left and I saw the same motor
7 vehicle traveling at the same rate of speed, striking
8 this plaintiff."

9 From all those circumstances, the fact that
10 the motor vehicle was traveling at 70 miles an
11 hour, traversed about 150 feet in two or three
12 seconds, when it was seen again it was still
13 traveling at 70 miles an hour, I think from Mr.
14 Adler's testimony alone, based on your good common
15 sense and experience, you would infer that that
16 motor vehicle passed a stop sign without stopping.

17 So there you have the same fact established
18 by direct evidence and circumstantial evidence.

19 The law does not regard one form of evidence
20 as better than the other. At times circumstantial
21 evidence is of a better quality. At times direct
22 evidence is of better quality. The law requires
23 that both upon the direct and circumstantial
24 evidence that the Government prove guilt beyond a
25 reasonable doubt.

1
2 You, the jurors, are the sole judges of the
3 credibility of the witnesses, which means the
4 believability of their testimony and the weight
5 their testimony deserves.

6 Scrutinize the testimony given and the
7 circumstances under which each witness testified
8 and every matter in evidence which tends to show
9 whether a witness is worthy of belief.

10 Consider each witness' intelligence, the
11 witness' motive and state of mind, why is the
12 witness testifying, what is the witness thinking
13 of as he is testifying before you. Take into
14 consideration the demeanor and manner of the witness
15 while testifying on the witness stand before you.
16 Is the witness answering directly? Is he giving
17 a full answer? Is the witness evasive? Take into
18 consideration the witness' own ability to observe
19 the matters to which he has testified, whether he
20 or she has impressed you as having an accurate
21 recollection of these matters. Take into con-
22 sideration the relation that each witness might
23 bear to either side of the case; the manner in
24 which each witness be affected by the verdict; the
25 extent to which, if at all, each witness is either

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2 supported or contradicted by other evidence in the
3 case.

4 A defendant who wishes to testify is competent
5 as a witness.

6 The defendant took the witness stand and
7 testified. You must judge his testimony in the
8 same manner as any other witness.

9 If a witness is shown to have knowingly
10 testified falsely concerning a material matter,
11 you have the right to distrust all that witness'
12 testimony, or you may decide to accept such part
13 of it as you recognize as being credible. That
14 principle underscores the wide discretion a jury
15 has in assessing the credibility of witnesses.

16 The defendant offered evidence of good
17 general reputation for truth and veracity, honesty
18 and integrity, and as a law abiding citizen.
19 The defendant also offered the personal opinion of
20 witnesses as to these traits of character. The
21 jury should consider such evidence along with all
22 the other evidence in the case.

23 Evidence that a defendant's reputation as
24 to these traits has not been discussed, or that
25 those traits of the defendant's character have not been

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2 questioned, may be sufficient to warrant an
3 inference of good reputation as to those traits
4 of character.

5 Evidence of a defendant's reputation and
6 the witness' opinion, which is inconsistent with
7 those traits of character ordinarily involved
8 in the commission of the crime charged, may give
9 rise to a reasonable doubt that a person of good
10 character in respect to these traits would commit
11 such crime.

12 I think the lawyers' summations indicate
13 that they regard the question of identity as
14 a critical issue in this case.

15 The Government has the burden of proving
16 that the accused committed the crime. The jury
17 must be satisfied beyond a reasonable doubt that
18 the accused was present at the Carvel parking lot
19 and that it was the defendant who drove the red
20 Plymouth Fury on to the parking lot on November
21 4, 1976. If the Government hasn't proved that,
22 then you have the obligation of finding the de-
23 fendant not guilty.

24 Identification testimony is an expression of
25 belief or impression by the witness. Its value

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2 depends on the opportunity the witness had to
3 observe the offender at the time of the offense
4 and make a reliable identification later.

5 In appraising the identification testimony
6 of the witnesses, you should consider the following:
7 Whether the witness had the capacity and an
8 adequate opportunity to observe the offender.
9 This will depend on all the circumstances at the
10 time the witness observed the offender. This
11 includes how long or short a time the witness
12 saw the offender, how far or close the witness was
13 to the offender, the lighting conditions at the
14 time, the position from which the witness viewed
15 the accused.

16 You may also take into consideration when
17 the witness identified the accused in court as
18 the offender, the strength of the identification,
19 that is, was the witness absolutely sure, reasonably
20 sure or in such serious doubt as to the resemblance
21 of the offender, that the identification is worth-
22 less.

23 Scrutinize all the circumstances under which
24 the identification was made, and you decide whether
25 the Government proved beyond a reasonable doubt or

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2 whether the Government proved that the accused
3 was indeed the individual who came on to the
4 Carvel parking lot on November 4th, 1976.

5 Now let's turn to the indictment.

6 The indictment is based on Section 841(a)(1)
7 and 846 of Title 21 of the Food and Drug Act.
8 The title of the act really was the Drug Abuse
9 Control Act of 1970. And almost all federal laws
10 are codified. And the Section with which the
11 defendant is charged violating is found in Title 1.

12 The Congress in the Act of 1970 made a list
13 of controlled drugs. Under the general pattern
14 of the Act the Government strictly controlled the
15 importation, the manufacture, the transportation,
16 possession, distribution of certain drugs. And
17 they had arrived at schedules. The Congress gave
18 authority to the Attorney General to place certain
19 drugs on the schedule. Methaqualone sometimes
20 known as qualudes was added to Schedule 2, and it
21 is a controlled drug.

22 Section 841(a)(1) of Title 21 says this in
23 pertinent part:

24 "It shall be unlawful for any person knowingly
25 or intentionally to possess with intent to

1
2 distribute a controlled substance."

3 In those few words the Congress in effect
4 said that it is a crime to possess certain drugs--
5 methaqualone being one of them--with intent to
6 distribute. And I will explain what those terms
7 mean later.

8 In another Section, 846, it provided:

9 "Any person who conspires to commit any
10 offense defined in this sub-chapter" commits the
11 offense of conspiracy.

12 So there are two separate sections: One
13 providing for what we call the substantive offense,
14 the actual possessing with intent to distribute;
15 and the other section making it a crime to conspire
16 to possess the controlled substance with intent
17 to distribute.

18 The indictment is based on those two sections.
19 The case is the United States of America against
20 Salvatore Magavero.

21 An indictment is merely the method of bringing
22 a defendant into court to answer charges. The
23 allegations of the counts of the indictment are not
24 to be considered by you as proof. Proof comes
25 through evidence at the trial. The defendant has

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2 said not guilty, which places the burden upon the
3 Government to prove guilt beyond a reasonable doubt.

4 You are not to attach any significance to
5 the fact that the indictment is brought in the
6 name of the United States. The prosecution and
7 the defendants are equal in this court. The
8 obligations of the prosecution and the rights of
9 the defendant are not to be reduced because the
10 prosecution is by the United States of America.

11 Now I will turn to the charge in count one,
12 which is the conspiracy count. This is not the
13 charge that charges the defendant with possessing
14 the methaqualone. This is the charge that charges
15 the defendant with conspiring with others to go
16 into the business or to deal in methaqualone.

17 Count one:

18 "On or about and between September, 1976, and
19 February 2, 1977, both dates being approximate and
20 inclusive, within the Eastern District of New
21 York and elsewhere, the defendant Salvatore
22 Megavero, together with Irwin Bell, Frederick
23 Moskowitz and Peter D'Agostino did knowingly and
24 intentionally combine, conspire, confederate,
25 and agree to violate Section 841(a)(1) of Title 21,

1
2 United States Code.

3 "(1) It was a part of said conspiracy that
4 the defendants would knowingly and intentionally
5 distribute and possess with intent to distribute
6 substantial quantities of methaqualone, a Schedule
7 II controlled substance.

8 "(2) It was a further part of said conspiracy
9 that the defendants and co-conspirators would
10 conceal the existence of the conspiracy and would
11 take steps designed to prevent disclosure of their
12 activities, in violation of Title 21, United States
13 Code, Section 846."

14 So the crime charged in count one is that
15 they got together for the purpose of dealing
16 in methaqualone. And the statutory phrase is
17 they possessed with intent to distribute.

18 The defendant Salvatore Mogavero is being
19 charged with being in an unlawful partnership
20 with Irwin Bell, Frederick Moskowitz and Peter
21 D'Agostino, to engage in the business of dealing
22 in methaqualone on or about and between September,
23 1976, and February 2, 1977. The charge is
24 conspiracy to violate Title 21, United States Code,
25 Section 841(a)(1).

1
2 Conspiracy is a partnership in criminal
3 purposes in which each member becomes the agent
4 of any other member. In a conspiracy the partners
5 are called conspirators.

6 The mere similarity of conduct among several
7 persons, and the fact that they may have associated
8 with each other and may have assembled together
9 and discussed common names and interest does not
10 necessarily establish proof of the existence of
11 a conspiracy. In other words, the mere fact that
12 there is proof that this defendant socialized with
13 D'Agostino or not with D'Agostino, knew him, talked
14 about common names, opinions, ideas, does not
15 make it a conspiracy. It is not enough to prove
16 a conspiracy. However, the evidence in the case
17 need not show that the members entered into any
18 express or formal agreement.

19 The Government doesn't have to prove they
20 sat down and said, "Now, let's see, we are partners,
21 we are agreeing to deal in methaqualone." The
22 Government doesn't have to prove that. The
23 Government doesn't have to prove that by words
24 spoken or in writing that they stated between them
25 that their object and purpose was to deal in

1
2 methaqualone, or that they discussed the details
3 thereof, or the means by which the business was
4 to be conducted.

5 What the evidence in the case must show
6 beyond a reasonable doubt in order to establish
7 proof that a conspiracy existed is that the members
8 in some way or manner or through some contrivance,
9 positively or tacitly came to a mutual under-
10 standing to try to accomplish the sale of
11 methaqualone.

12 Before the jury may find that a defendant
13 or any other person has become a member of the
14 conspiracy, the evidence in the case must show
15 beyond a reasonable doubt that the conspiracy
16 was knowingly formed and that the defendant or
17 other persons who it is claimed have been members
18 of the conspiracy, willfully participated in the
19 unlawful plan with the intent to advance the
20 purpose or object of the conspiracy, that is, to
21 deal in methaqualone.

22 The Government must prove that the defendant
23 was aware that he was participating in the
24 possession with intent to distribute, and/or dealing
25 in methaqualone, and that it was unlawful for

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2 him to deal in methaqualone pills; that he
3 deliberately and intentionally met with the under-
4 cover agent or met with the other members of
5 the conspiracy on November 4, 1976, at the Carvel
6 parking lot for the purpose of delivering methaqualone
7 pills to the prospective purchaser, who happened
8 to be an undercover agent; and that in doing so
9 he advanced the business of the conspiracy charge
10 in the indictment.

11 In determining whether a conspiracy existed,
12 the jury should consider the actions and
13 declarations of all the alleged participants.
14 However, in determining whether the accused
15 became a member of the conspiracy, the jury should
16 consider only his acts and declarations. He cannot
17 be bound by the acts and declarations of other
18 participants until it is established that a con-
19 spiracy existed and that he was one of its members.

20 If you find the Government proved beyond a
21 reasonable doubt that the defendant, and together
22 with one or more of the others identified as co-
23 conspirators in the indictment, had combined, con-
24 spired and agreed to deal in methaqualone, and
25 that the defendant knowingly and willfully became

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2 a member of the conspiracy, and thereafter one of
3 the members of the conspiracy knowingly committed
4 an overt act, then the Government shall have proved
5 all the elements of the conspiracy charged. It
6 is immaterial that the deal was never consummated,
7 if you find that it wasn't consummated.

8 The Government must prove that after the
9 understanding to deal in methaqualone was established
10 or agreed upon, that one of the co-conspirators
11 thereafter committed an overt act in an effort to
12 effect or accomplish the purpose of the conspiracy.

13 In other words, a conspiracy means more than
14 parties thinking about it. The law requires that
15 the Government prove beyond a reasonable doubt that
16 one of the conspirators--it doesn't necessarily
17 have to be the accused, though the Government
18 charges this accused with committing one of the
19 acts in the furtherance of the conspiracy when he
20 delivered or allegedly delivered--the Government
21 claims the proof indicates he delivered methaqualone
22 to a parking lot, but the Government must prove
23 that any one of the conspirators knowingly committed
24 an overt act in the furtherance of the conspiracy.

25 As I say, an overt act is something you can

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2 see or hear. And the act is a significant step
3 toward accomplishing the purpose of the conspiracy.

4 A party just sitting down and thinking and
5 talking and agreeing is not enough. It must be
6 something done or declared to carry out that
7 agreement. That's what we mean by an overt act.

8 I told you during the trial when proof was
9 offered to establish the conspiracy, and this
10 defendant wasn't present, that those conversations
11 and the acts would be transactions, if you believe
12 that the transactions took place on the sale of
13 the methaqualone by Moskowitz, that this accused
14 was not bound by that, you could not charge
15 those acts or those statements to this defendant,
16 unless the Government proved beyond a reasonable
17 doubt that the conspiracy charged in the indictment
18 was established during the period and for the pur-
19 poses stated.

20 Two, that the party--in this case Mr. Moskowitz,
21 the person--was shown to have knowingly and willfully
22 entered into that conspiracy and been a conspirator;
23 and thereafter those declarations or those acts
24 could be charged against this accused if it was
25 shown beyond a reasonable doubt that he was a

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2 member of the conspiracy; that he knowingly and
3 willfully entered into the conspiracy; then if
4 the statements and acts made and committed by
5 Moskowitz were made to advance the business of
6 the conspiracy, the dealing in methaqualone, and
7 during the term of the conspiracy, it was then
8 chargeable against this defendant.

9 If the Government doesn't prove all that,
10 then just disregard that evidence.

11 The Government must prove the following
12 beyond a reasonable doubt in order to establish
13 count one of the indictment:

14 One, that the conspiracy described in the
15 indictment was willfully formed and existing at or
16 about the time alleged; two, that the accused
17 knowingly and willfully became a member of the
18 conspiracy. In other words, that he was aware that
19 they were getting together for the purpose of
20 making sales and distributing and possessing with
21 intent to distribute methaqualone, and that knowing
22 that it was unlawful to deal in methaqualone he
23 nevertheless deliberately, intentionally and
24 voluntarily participated in the deal; three, that
25 thereafter one of the conspirators knowingly

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2 committed an overt act during the term of the
3 conspiracy and in furtherance of the object or
4 purpose of the conspiracy as charged.

5 Now we turn to count two. This is the
6 substantive offense. I will repeat what Section
7 841(a)(1) says.

8 The Congress made this a crime in this
9 language:

10 "It shall be unlawful for any person knowing-
11 ly or intentionally to possess with intent to
12 distribute a controlled substance."

13 So it is the possession with the intent to
14 distribute.

15 The Government must prove the following
16 essential elements of the crime in order to
17 establish the crime charged. But first I think
18 I should read the crime charged.

19 Count two says as follows:

20 "On or about the 2nd day of September, 1976,
21 within the Eastern District of New York, the
22 defendant Salvatore Mogavero did knowingly and
23 intentionally possess with intent to distribute
24 a quantity of methaqualone, a Schedule 2 controlled
25 substance, in violation of Title 21, United States

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2 Code, Section 841(a)(1)."

3 So the Government must prove beyond a
4 reasonable doubt, one, that on November 4, 1976,
5 the defendant possessed a quantity of methaqualone,
6 a Schedule 2 controlled substance; two, that
7 such possession was knowing and intentional, and
8 that the defendant possessed the methaqualone with
9 intent to distribute the same.

10 Now, when we talked about possession, we
11 talked about having dominion and control over
12 the substance.

13 The Government says this is the individual
14 who drove to the parking lot on November 4, 1976,
15 and had in the trunk of his car under his control
16 a quantity of methaqualone.

17 Now, as I have charged you, methaqualone is
18 a non-narcotic, Schedule 2 controlled substance.

19 The substance that was in the trunk of the
20 car was never seized. It isn't before you. The
21 Government is saying, Ms. Fields is saying that
22 based on all the evidence and all the circumstances
23 surrounding the presence of that automobile at
24 the premises, that the substance in the trunk of
25 that car was methaqualone. What Ms. Fields is in

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2 a sense arguing to you is that it's circumstantial
3 evidence, and that based on all you heard, your
4 experience and good common sense should tell you
5 that it was methaqualone. And she asks you to
6 make that inference.

7 Mr. Geoly, on the other hand, is arguing
8 that the circumstances do not warrant that inference.
9 He might even have said it stronger, that there are
10 no circumstances on which such inferences can
11 be based.

12 Well, you make that decision.

13 We talk about possession with intent to
14 distribute, and that is the phrase used in the
15 statute. It means the Government must show beyond
16 a reasonable doubt that the defendant possessed
17 and had in his possession a quantity of methaqualone,
18 and that he intended to sell the same, or otherwise
19 distribute it.

20 In other words, the Government must show the
21 methaqualone, if you find that it was in the
22 defendant's possession, was not for his own use,
23 but rather for sale or distribution.

24 The statute uses the word "knowingly" or
25 "intentionally".

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2 Knowingly means that the Government must
3 prove beyond a reasonable doubt that the accused
4 was aware that he had methaqualone in his possession;
5 and that even if you find that he had it, that he
6 knew--not even if you find that he had it, that
7 having found, if you do, that having methaqualone
8 in his possession, that he was aware that it was
9 methaqualone, and that he didn't have it in his
10 possession accidentally or through mistake or
11 ignorance, but that it was a conscious possession,
12 one where he was aware of the substance that he
13 had.

14 I will shortly excuse you for deliberations
15 on the matter before you.

16 Your verdict must represent the considered
17 judgment of each juror. In order to return a
18 verdict it is necessary that each juror agree to
19 the verdict. The verdict must be unanimous.

20 It is your duty, as jurors, to consult with
21 one another in discussing the evidence. The jury
22 process is a deliberative process. It is a change
23 of views based on the evidence.

24 I will be through soon.

25 Do you want me to take a rest?

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2 JUROR NUMBER 8: No. That's all right.

3 THE COURT: It's an exchange of views based
4 on the evidence.

5 It is improper for any juror to accept the
6 verdict of the others and just go along. We need
7 twelve separate verdicts independently arrived at.
8 Each juror must decide the case for himself or
9 herself.

10 It is just as improper for a juror to take
11 an intransigent view and refuse to discuss the
12 evidence with another juror.

13 It would be improper for a juror to come
14 in and say, "Well, I have arrived at my verdict
15 and I won't talk to anybody else."

16 On the other hand, if the juror has arrived
17 at a tentative verdict, and after discussion finds
18 that it's more consistent with the evidence to
19 change the verdict originally arrived at, there
20 is nothing wrong with that.

21 During your deliberations you may have
22 reason to ask for a rereading of the testimony.
23 All the notes will come through your Foreman.
24 Try to tell me the name of the witness whose
25 testimony you want to hear, and if possible, the

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2 subject matter. Tell me if you want to hear the
3 direct and the cross, or just the cross-examination,
4 or whether you want to hear all the testimony.

5 During your deliberations, you may want
6 exhibits. Just write it down and ask for the
7 exhibits.

8 I am not interested in knowing how you stand
9 at any particular time during your deliberations.
10 Don't tell me you stand ten to two or eleven to
11 one, or any other ratio. I am interested only
12 when you arrive at a unanimous verdict.

13 When you arrive at a unanimous verdict,
14 send me a note saying you have a verdict. Don't
15 tell me what the verdict is.

16 If I get that note, I will bring you into the
17 courtroom. I will ask the Foreman to stand and
18 I will say, "In the case of the United States of
19 America against Salvatore Mogavero, how do you
20 find the defendant as to count one, guilty, or
21 not guilty?"

22 "How do you find the defendant as to count
23 two, guilty or not guilty?"

24 And after you render your verdict I will turn
25 to Juror Number 2 and say in effect, "Have you

1
2 heard the verdict of the Foreman? Is that your
3 verdict?"

4 And then Juror Number 3, "Is that your verdict,"
5 and so on to Juror Number 12.

6 If all the jurors agree on a verdict in
7 open court, then it becomes the verdict of the
8 case. And that's the first time it becomes the
9 verdict of the case. And that's why I don't
10 want any message coming to me telling me what the
11 verdict is.

12 The jury process is a secretive process and
13 only when the verdict is announced in court should
14 anyone know what the verdict is.

15 This time I will ask you to retire in a
16 few moments. Don't start your deliberations.
17 I want to talk to the lawyers.

18 The jury is excused.

19 (The jury leaves the courtroom at 3:15 P.M.,
20 and the following takes place out of the presence
21 of the jury.)

22 THE COURT: Are there any suggestions or
23 objections?

24 MS. FIELDS: No, the charge was satisfactory.

25 THE COURT: How about you, Mr. Geoly?

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2 MR. GEOLY: I have no objections, your Honor.

3 May I ask your Honor, did your Honor cover
4 the point, if the jury should find that either it
5 was not him on November 4th that was present, or
6 he did not possess the methaqualone in the car
7 at that time, that they would have to acquit him
8 on count one?

9 THE COURT: Sure. When I gave the charge
10 on identification I said that the Government must
11 prove that this defendant committed the crime.

12 MR. GEOLY: But aside from that, Judge,
13 the fact that he must also be present and have
14 the methaqualone present in the trunk to be guilty
15 on count one.

16 THE COURT: I don't see how they could find
17 that he was there and not have the methaqualone.
18 I have charged them on the right to infer that there
19 was methaqualone in the car. And I also pointed
20 out that you argued the circumstances didn't warrant
21 it.

22 MR. GEOLY: Yes, your Honor.

23 THE COURT: But I thought it was clear that
24 the Government had to prove that he was the one
25 who was at the Carvel parking lot or they had to

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2

acquit.

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Would you please sit down, Mr. Mogavero.
I only want lawyers to stand in this court, so
I know who the lawyers are.

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MR. GEOLY: I have no further requests.

THE COURT: All right.

Seek the jury.

(Jury enters the courtroom at 3:17 P.M., and
the following takes place in open court and in
the presence of the jury.)

THE COURT: I want to make certain that
you understand that if the Government does not
prove beyond a reasonable doubt that it was the
accused at the Carvel parking lot on November 4th,
1976, and that there was methaqualone in the car
at that time, that you must find the defendant
not guilty on both counts.

At this time I will excuse the alternate.
Only twelve jurors may deliberate on the matter.

You are excused with the thanks of the Court,
sir.

Do you have anything in the jury room?

THE ALTERNATE JUROR: No.

THE COURT: Then you may leave.

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THE ALTERNATE JUROR: Thank you.

(Whereupon the alternate juror leaves the courtroom.)

THE COURT: Would the clerk please swear the marshals.

(Whereupon the marshals are sworn.)

THE COURT: At this time may I remind you of the oath you took at the outset of the trial, and that was to render a true and just verdict. That in turn means that you render a verdict based solely on the evidence in accordance with the law as the Court charged you, free of all bias, prejudice or sympathy.

With that, the jury may retire from the courtroom in the custody of the marshals to deliberate on the matter before them.

(The jury leaves the courtroom at 3:20 P.M., for the purposes of commencing their deliberations.)

THE COURT: Since there appears to be some question in your mind as to what I said, I thought I will say it again, and say it clearly.

Do you have any objection to that?

MS. FIELDS: No.

MR. GEOLY: All right, Judge.

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2 THE COURT: If he feels a little concerned
3 about that, I would rather the defendant get the
4 benefit about it.

5 MR. GEOLY: Judge, I want you to excuse him
6 jumping up and down. He has a little nervous
7 affliction. He always has it. In fact, he is
8 under the doctor's care for it. And I am trying
9 to keep a lid on it.

10 THE COURT: I notice his reaction to the
11 witness' testimony. At times when Ms. Fields
12 was summing up he was overruling her.

13 MR. GEOLY: He has a neurological problem,
14 Judge.

15 THE COURT: All right.

16 MR. GEOLY: Thank you.

17 (A short recess is taken awaiting further
18 communication from the jury.)

19 (Time noted is 3:20 P.M.)

20 THE COURT: We have a jury note that says,
21 Paul Sennett's testimony, Baker's testimony.

22 Would you please seek the jury.

23 THE COURT: Note marked Court's Exhibit 4.

24 (The jury enters the courtroom at 3:21 P.M.)

25 THE COURT: You asked for Special Agent

1 Sennett. You have Sten, but his name is
2 Sennett. And you asked for Baker's testimony.
3

4 And I asked Mr. Rapaport to read his notes.

5 (The court reporter reads the testimony
6 of Agent Paul Sennett.)

7 THE COURT: Would the jury just stand up
8 in their seat for a little break, and then we
9 will take Baker's testimony.

10 Anytime you want to stop listening, if all
11 the jurors say they don't want to hear any more,
12 it's all right with me.

13 THE FOREMAN: It's up to--

14 THE COURT: Well, if I see the hands raised
15 when you don't want to hear any more, fine. Other-
16 wise we will listen to Mr. Baker.

17 If at any time during Mr. Baker's testimony
18 you say you have heard enough, just raise your
19 hands. When I see all twelve hands raised, you
20 don't have to keep them up, I will remember, then
21 we will stop.

22 The reporter advises me it will only take
23 about ten minutes to read Baker's testimony.

24 (Whereupon the court reporter reads Agent
25 Robert Baker's testimony.)

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2 THE COURT: That completes Mr. Baker's
3 testimony.

4 The jury is excused for deliberations.

5 (The jury leaves the courtroom at 4:36 P.M.)

6 (A recess is taken awaiting further com-
7 munication from the jury.)

8 (Time noted is 5:30 and the following takes
9 place out of the presence of the jury.)

10 THE COURT: I intend to call the jury in and
11 tell them if they can't arrive at a verdict soon,
12 I am ready to suspend at about 6:00 o'clock, and
13 I will tell them to come back tomorrow.

14 MR. GEOLY: I am in agreement with that.

15 THE COURT: We seldom keep a jury late.

16 MS. FIELDS: No objection, your Honor.

17 THE COURT: Ask the jury to come in.

18 (The jury enters the courtroom at 5:31 P.M.
19 and the following takes place in the presence of
20 the jury.)

21 THE COURT: I want to advise you if you are
22 not close to a verdict I am ready to suspend soon
23 and have you come back tomorrow morning.

24 You tell me when you return to the jury room
25 by a note whether you want to continue or would

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rather suspend and come back tomorrow morning.

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THE FOREMAN: We will do that.

4

(The jury leaves the courtroom at 5:32 P.M.)

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(A note is received from the jury at 5:37 P.M.)

6

THE CLERK: Note from the jury is marked

7

Court's Exhibit 5.

8

THE COURT: It says, agreed to adjourn until

9

tomorrow morning.

10

All right, call them in.

11

When I excuse the jury, let them leave the

12

courtroom and stay here about five minutes.

13

(The jury enters the courtroom at 5:38 P.M.)

14

THE COURT: We will suspend at this time, and

15

we will continue tomorrow morning.

16

I am going to ask you to come in a little

17

early tomorrow morning only because I have some

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matters on at 10:00 o'clock and I want to give

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you whatever direction I am required to before

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the other proceedings start.

21

I suggest you get into the courthouse about

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9:30 and come to the courtroom directly. Don't

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go to the Central Jury Room. We will mark you

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present.

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And as soon as all twelve get here, I will

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2 call you back into the courtroom.

3 Now, when you come into the jury room
4 tomorrow, don't discuss the case among yourselves.
5 Wait until I find out that all twelve are here,
6 and then I will bring all twelve into the courtroom,
7 and then I will excuse you for continued deliber-
8 ations.

9 It's not proper for part of the jury to talk
10 about the case. The case must be discussed in
11 the presence of the entire jury. I must make sure
12 that all are here before you continue your de-
13 liberations.

14 So it's very important that you not talk
15 about the case, certainly not when you go home
16 or at any time, and certainly not when you arrive
17 at the courthouse and in the jury room. But the
18 deliberations will continue after I learn all are
19 here, I bring you into the courtroom, I note that
20 you all are here, and then I will excuse you.

21 Now, if some misfortune happens to any one
22 juror, then we have problems, we can't proceed with
23 the trial. So it's very important that every one
24 of you get here. I will be praying from now until
25 I see twelve jurors come back to this courthouse.

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So again, we will suspend at this time.

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The jury is excused. And when I excuse you tomorrow, it will be as if you continue your deliberation from where you left off, all twelve together, discussion continued from where you stopped today.

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I will see you tomorrow morning. The jury is excused.

Try to get here at 9:30.

(The jury leaves the courtroom at 5:41 P.M.)

THE COURT: All right, we will suspend for the day.

Please get here by 9:30 tomorrow so we can continue the deliberations soon after 9:30.

(Whereupon case on trial is adjourned until 9:30 A.M., June 24, 1977.)

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

A 274 274

3 -----X
4 UNITED STATES OF AMERICA :

5 - against - :

77 CR 129

6 SALVATORE MOGAVERO, :

7 Defendant. :

8 -----X

9
10 United States Courthouse
11 Brooklyn, New York

12 June 24, 1977

13 B e f o r e:

14 HONORABLE JACOB MISHLER, U.S.D.J.,

15 CHIEF JUDGE

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19
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22
23
24 HARRY RAPAPORT
25 Acting Official Court Reporter

Appearances:

DAVID G. TRAGER, ESQ.,
United States Attorney for the Eastern
District of New York,

By: RHONDA FIELDS, ESQ.,
Assistant United States Attorney,
For the Government.

FRANK GEOLY, ESQ.,
For the Defendant.

M O R N I N G S E S S I O N

(June 24, 1977)

(The following takes place out of the presence of the jury and out of the presence of the defendant.)

THE COURT: Mr. Geoly, I see the defendant is not present. Do you have any objection if I call the jury in and advise them they may continue their deliberations?

MR. GEOLY: No objection, your Honor.

THE COURT: All right.

Seek the jury.

(The jury enters the courtroom.)

THE COURT: Good morning.

I count twelve jurors. I was a little worried for a few moments, but we are all here.

The jury is excused for continued deliberations on the matter before them.

(The jury leaves the courtroom for the purpose of continuing their deliberations at 9:38 P.M.)

(A recess is taken awaiting further communication from the jury.)

(Time noted as 10:30 A.M. and the following takes place out of the presence of the jury.)

THE COURT: The note says: Exact charges,

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2 one and two.

3 I don't know if they just want me to read
4 the counts of the indictment or whether they want
5 a definition of what conspiracy is or what the
6 essential elements are. I will ask them whether
7 they just want me to read the indictment. If
8 that's it, I will just read the charge of the
9 indictment.

10 If they want everything else, then I will
11 ask Mr. Rapaport to give it because they want
12 exactly what I said before.

13 Then they want the presentation of the
14 satchel.

15 And, three, here again, charge of Judge on
16 circumstantial evidence.

17 I will ask Mr. Rapaport to read that charge.

18 All right?

19 MS. FIELDS: Yes, sir.

20 My agent has the satchel and he is tied up
21 and it will take him about a half an hour to get
22 here.

23 THE COURT: All right. They will get it
24 later. I don't see that that's so important. But
25 they want it and we will give it to them.

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Martin, will you please seek the jury.

THE CLERK: Note from jury marked Court Exhibit 6.

THE COURT: Hold the jury for one moment, please.

If they are asking for the exact charges and they would be interested in having a copy of the counts in the indictment, would you have any objection if they received it?

MR. GEOLY: No.

THE COURT: You told me you would re-draw it. Do you have it with you?

MS. FIELDS: No. I will have to go up and get it. Once you send them in I will have to get it for you.

THE COURT: All right. I will see if that is what they want.

All right, seek the jury.

(The jury enters the courtroom at 10:34 A.M. and the following takes place in the presence of the jury.)

THE COURT: Your first request is for exact charges one and two.

Are you asking me that I read the counts in

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the indictment?

THE FOREMAN: Yes.

THE COURT: In other words, you are not asking that I have the reporter read back to you all the charges concerning the definition of conspiracy and the statute on it, you just want the charges on the indictment?

THE FOREMAN: Yes.

THE COURT: The lawyers have agreed that they will send a copy of the indictment in to you, so we will send in twelve copies of the indictment so you can each have it. But in the meantime I will read it to you.

"Count one.

"On or about and between September 1976 and February 2, 1977, both dates being approximate and inclusive within the Eastern District of New York and elsewhere, the defendant Salvatore Mogavero, together with Irwin Bell, Frederick Moskowitz and Peter D'Agostino, did knowingly and intentionally combine, conspire, confederate and agree to violate Section 841(a)(1) of Title 21 United States Code.

"One, it was part of said conspiracy that

1
2 that the defendants would knowingly and intention-
3 ally distribute and possess with intent to
4 distribute substantial quantities of methaqualone,
5 a Schedule 2 controlled substance.

6 "Two. It was a further part of said con-
7 spiracy that the defendants and co-conspirators
8 would conceal the existence of the conspiracy
9 and would take steps designed to prevent disclosure
10 of their activities in violation of Title 21
11 United States Code Section 846.

12 "Count two:

13 "On or about the 4th day of November, 1976,
14 in the Eastern District of New York, the defendant
15 Salvatore Mogavero did knowingly and intentionally
16 possess with intent to distribute a quantity of
17 methaqualone, a Schedule 2 controlled substance,
18 in violation of Title 21, United States Code,
19 Section 841(a)(1)."

20 Now, it may take some time to get copies
21 of this to you, but at least I read it to you.

22 On my charge on circumstantial evidence,
23 I will ask Mr. Rapaport to read it to you.

24 On the third item you asked for, the pre-
25 sentation of the satchel, it is someplace in an

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2 office, and I have asked for it, and it will
3 take maybe a half hour to get it, and we will
4 get it for you.

5 All right, Mr. Rapaport.

6 (The court reporter reads back from the
7 Court's charge as follows:)

8 "Evidence is the method by which a disputed
9 fact is proved or disproved. Evidence is generally
10 classified as direct evidence or as indirect
11 evidence, and sometimes called circumstantial
12 evidence.

13 "The testimony of the witness as to what
14 that witness saw or heard is called direct evidence.

15 "Circumstantial evidence, however, is proof of
16 a disputed fact by the jury drawing an inference
17 from the establishment of circumstances from which
18 the inference may reasonably be drawn.

19 "I will give you an example of this. Let's
20 assume you were sitting here as a jury in a personal
21 injury case. Mrs. A claims that Mr. B passed a
22 stop sign without stopping and struck her.

23 "In this hypothetical, let's assume that my
24 courtroom deputy, Mr. Adler and myself were standing
25 on the corner where the stop sign was erected at

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2 the time and place of the alleged accident and
3 injury.

4 "Now, if I were facing the stop sign and the
5 arrest, I would be in a position to testify
6 directly as to that disputed fact.

7 "Let us assume I was facing the street at
8 that time, and let's assume that my courtroom
9 deputy had his back to the sign and his back to the
10 street. If I were called to testify I might say,
11 'Well, this motor vehicle was traveling down the
12 street at 70 miles an hour and I saw it pass the
13 stop sign without stopping and strike Mrs. A.'

14 "If Mr. Adler were called to the witness
15 stand he couldn't give direct testimony on that
16 issue, again, the issue being whether or not
17 the defendant stopped his motor vehicle at the
18 stop sign before proceeding. He could nevertheless
19 testify to circumstances from which the jury might,
20 using their good common sense and experience,
21 draw a reasonable inference that the motor vehicle
22 failed to stop at the stop sign before proceeding.
23 He might say, 'Well, I was talking to the judge and
24 I saw the car come into the area of my peripheral
25 vision, it was proceeding at about 70 miles an

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2 hour, it passed behind me, I lost sight of it
3 for two or three seconds, and for about 150 feet.
4 And I turned to my left and I saw the same motor
5 vehicle traveling at the same rate of speed, striking
6 this plaintiff.'

7 "From all those circumstances, the fact that
8 the motor vehicle was traveling at 70 miles an
9 hour, traversed about 150 feet in two or three
10 seconds, when it was seen again it was still
11 traveling at 70 miles an hour, I think from Mr.
12 Adler's testimony alone, based on your good common
13 sense and experience, you would infer that that
14 motor vehicle passed a stop sign without stopping.

15 "So there you have the same fact established
16 by direct evidence and circumstantial evidence.

17 "The law does not regard one form of evidence
18 as better than the other. At times circumstantial
19 evidence is of a better quality. At times direct
20 evidence is of better quality. The law requires
21 that both upon the direct and circumstantial
22 evidence that the Government prove guilt beyond a
23 reasonable doubt."

24 THE COURT: Now, as I say, it is going to
25 take a little time before we can get a copy of

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2 these counts to you and the satchel.

3 The jury is excused.

4 (The jury leaves the courtroom at 10:40 A.M.)

5 (The following takes place out of the
6 presence of the jury.)

7 THE COURT: I don't know whether your copy
8 conforms to the charge I gave, because I didn't
9 want them to know that Bell and Moskowitz and
10 D'Agostino were in this same count.

11 Did you revise it?

12 MS. FIELDS: No, I didn't delete their names.

13 THE COURT: I will have to do it then, and
14 the caption I just wanted to be Mogavero. I
15 will do it.

16 In the meantime see if you can get the
17 satchel.

18 (A recess is taken awaiting further
19 communication from the jury.)

20 (Time noted is 11:10 A.M., and the following
21 takes place out of the presence of the jury.)

22 THE COURT: Are you satisfied this is a
23 cleaned up copy of the indictment?

24 MS. FIELDS: Yes, your Honor.

25 THE COURT: You, Mr. Geoly?

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MR. GEOLY: Yes, your Honor.

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THE COURT: How many copies do we have here?

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THE CLERK: Twelve.

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THE COURT: I am handing the jury twelve revised indictments through the marshal.

7

THE CLERK: Marked as Court Exhibit 7.

8

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(Whereupon the jury is handed the revised indictment through the United States Marshal.)

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(A recess is taken awaiting further communication from the jury.)

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(Time noted is 11:37 P.M., and the following takes place out of the presence of the jury.)

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THE COURT: Mr. Geoly, would you look at the satchel and make sure it is in proper shape to turn over to the jury.

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MR. GEOLY: Yes.

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THE COURT: What is inside? Any of the qualudes loose?

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MS. FIELDS: No, your Honor. They are in plastic bags.

22

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THE COURT: All right.
Turn the bag over to the Foreman of the jury.

25

(Government's Exhibit 3 is given to the jury

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2 through the United States Marshal.)

3 (A recess is taken awaiting further communi-
4 cation from the jury.)

5 (Time noted is 1:21 P.M. and the following
6 takes place out of the presence of the jury.)

7 THE CLERK: A note from the jury is marked
8 Court Exhibit 8.

9 THE COURT: We have a verdict.

10 Seek the jury.

11 (The jury enters the courtroom at 1:24 P.M.
12 and the following takes place in open court and
13 in the presence of the jury.)

14 THE COURT: Madam Foreman, I have your
15 note saying that the jury arrived at a verdict.

16 Would you please stand.

17 In the case of United States of America
18 against Salvatore Mogavero, how do you find the
19 defendant as to count one, guilty or not guilty?

20 THE FOREMAN: Guilty.

21 THE COURT: How do you find the defendant
22 as to count two, guilty or not guilty?

23 THE FOREMAN: Guilty.

24 THE COURT: Thank you.

25 Juror Number 2--you need not stand.

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2 You heard the verdict as rendered by your
3 Foreman. Is that your verdict?

4 JUROR NUMBER 2: Yes.

5 THE COURT: Juror Number 3, is that your
6 verdict?

7 JUROR NUMBER 3: Yes, guilty.

8 THE COURT: Juror Number 3, you heard the
9 verdict?

10 JUROR NUMBER 3: Yes.

11 THE COURT: There is no question that it is
12 your verdict?

13 (Juror Number 3 nods affirmatively.)

14 THE COURT: You have to say so so that it
15 can be recorded, you see.

16 JUROR NUMBER 3: It's guilty.

17 THE COURT: Juror Number 4, is that your
18 verdict?

19 JUROR NUMBER 4: Yes.

20 THE COURT: Juror Number 5, is that your
21 verdict?

22 JUROR NUMBER 5: Yes, sir.

23 THE COURT: Juror Number 6, is that your
24 verdict?

25 JUROR NUMBER 6: Yes.

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2 THE COURT: Juror Number 7, is that your
3 verdict?

4 JUROR NUMBER 7: Yes, sir.

5 THE COURT: Juror Number 8, is that your
6 verdict?

7 JUROR NUMBER 8: Yes.

8 THE COURT: Juror Number, 9, is that your
9 verdict?

10 JUROR NUMBER 9: Yes.

11 THE COURT: Juror Number 10, is that your
12 verdict?

13 JUROR NUMBER 10: Yes.

14 THE COURT: Juror Number 11, is that your
15 verdict?

16 JUROR NUMBER 11: Yes, sir.

17 THE COURT: Juror Number 12, is that your
18 verdict?

19 JUROR NUMBER 12: Yes.

20 THE COURT: And so say you all.

21 Any motions you want to make before I dis-
22 charge the jury?

23 MR. GEOLY: No, your Honor.

24 THE COURT: You gave this case your full
25 consideration. I was in possession of some

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2 information that you were not in possession of.
3 I couldn't tell you, for example, that Irwin
4 Bell, Frederick Moskowitz and Peter D'Agostino
5 pleaded guilty. And though I am not sure, I
6 suspect the reason they weren't here to testify
7 is because if they were here to testify they
8 would have to testify truthfully, and if they
9 testified truthfully it would point a finger at
10 this defendant. That's my suspicion.

11 Was it part of your deal with the defendants
12 who pleaded guilty that they would not be required
13 to testify?

14 MS. FIELDS: Yes, your Honor.

15 THE COURT: Sometimes the Government makes
16 a deal with the defendant and says, "All right,
17 you plead guilty, and if you testify the cooperation
18 will be brought to the attention of the Court."

19 Sometimes the understanding is, "I will
20 plead guilty and I will not be required to testify."

21 So that pretty well indicates or gives you
22 reason to suspect what they would have said had
23 they been called to the stand to testify.

24 I thought that Mr. Geoly did an excellent
25 job, particularly when he said--and he didn't

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2 say anything wrong, but I remember the phrase,
3 he said D'Agostino, some friend; which was to
4 give you the impression that D'Agostino refused
5 to come to court to testify for the defendant.

6 But, of course, the defendant has the
7 right to compulsory process. He can bring any
8 witness in to testify. And if he thought it
9 would have been any help, he could have brought
10 Mr. D'Agostino in, and that pretty well tells
11 you the story.

12 JUROR NUMBER 8: Suppose there was a
13 verdict of guilty in one count and not guilty of
14 another count? What would have happened?

15 THE COURT: I would have dismissed on one
16 count. He would have been found not guilty on
17 one and he would have been sentenced on the other.

18 As a practical matter, the penalty is the
19 same for both. It's a maximum of five years, not
20 less than three years special parole term and
21 a \$15,000 fine.

22 As a practical matter, in a case like this
23 it is rare that a judge will impose consecutive
24 sentences.

25 But I think you have learned something.

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This is your last day of service?

JUROR NUMBER 6: No. We have a full week.

THE COURT: I will not say too much because you may be sitting on another case next week.

The jury is excused.

THE CLERK: Report down to the Central Jury Room, and one of you can get the cards, and you will get your instructions from the clerk there.

(The jury leaves the courtroom and the following takes place out of the presence of the jury.)

THE COURT: I don't know how many cases you have tried before, Ms. Fields. Have you tried many?

MS. FIELDS: Only about five or six, your Honor.

THE COURT: Well, you use low key, which I think is very effective.

And you, Mr. Geoly, I think you did an excellent job with what you had. That doesn't mean you won't suffer disappointment.

MR. GEOLY: Judge, in view of the lie detector test, I am very disappointed. And in view of the

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2 fact that the co-defendants would not come in
3 because their attorneys told them that it would
4 go against them, I am extremely disappointed.

5 THE COURT: Listen, you could have put them
6 on the witness stand and I would have directed
7 that they answer.

8 MR. GEOLY: Judge, if what we were saying
9 is true, they would come in and say it's not him,
10 and the Government would say, who is it? And
11 they don't want to give the other person up.
12 And that's exactly what their lawyers told them,
13 and that's exactly why they didn't come in,
14 especially D'Agostino, whom I interviewed myself.

15 THE COURT: You may believe that story,
16 Mr. Geoly. It's hard for me to believe.

17 MR. GEOLY: I will state right now I inter-
18 viewed the defendant D'Agostino originally and
19 he said this defendant is not the one, and he
20 wouldn't say who it was. And he will not come
21 into court to do it.

22 THE COURT: I will suspect now after I
23 sentence Mr. D'Agostino he will make an affidavit
24 saying it's not the one, and you will make a
25 motion for a new trial, which I will deny.

1
2 But I will tell you this. I will use all
3 the power of this Court to have Mr. D'Agostino
4 give a full and complete statement in light of
5 what you say.

6 MR. GEOLY: Judge, I ask that he be given
7 a lie detector test on one particular question,
8 to say that this man is the man.

9 THE COURT: I will not listen or accept
10 lie detector tests. I think that in light of this
11 evidence, the story that you apparently believed,
12 to me is a cock-and-bull story.

13 MR. GEOLY: As I said, I have interviewed
14 the man. I have been living with this man since
15 the beginning of my case. I have my feelings.
16 Your Honor is bound by the evidence that comes
17 out in court. Unfortunately sometimes the truth
18 cannot come out. Your Honor is bound by what
19 the jury did. I understand that.

20 THE COURT: If this defendant isn't the
21 man who drove that car, he knows the people who
22 he loaned the car to. He could have brought those
23 people in. He could have turned the names of
24 those people over to the United States Attorney.
25 It's too late in the day for that.

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3 MR. GEOLY: Judge, if what we surmise was
4 true, and D'Agostino set the mechanics in motion
5 to be able to use this car without this man knowing
6 it, then he didn't have to loan the car to anyone.

7 His keys were stolen on the job at one
8 particular point, and I didn't bring it out because
9 it sounded too preposterous, your Honor.

10 THE COURT: Mr. Geoly, you believe what he
11 tells you. I don't. I don't believe a word of it.
12 It's just as I say, a cock-and-bull story.

13 MR. GEOLY: Judge, when a man is not believed
14 and he says to any agency, anybody, you give me
15 any tests you can, sodium pentothal. I offered
16 to take that to the Government.

17 THE COURT: Now look, there is no harm in
18 anybody taking a test. My job is to determine
19 whether it's admissible. And I refuse to admit
20 anything like a polygraph test or any other truth-
21 telling test without the consent of the Government.
22 That's all, period.

23 MR. GEOLY: What more can a person do when
24 he turns around and someone says it's you, and
25 he says it's not me, and he is not believed, and
he turns around and says, I will take any test you

1
2 give me.

3 THE COURT: Hire a lawyer like you to put
4 up a pretty good fight. And that's what he did.

5 MR. GEOLY: Apparently it wasn't enough,
6 Judge.

7 THE COURT: Listen, you can't do the
8 impossible. Ms. Fields asks some pretty penetrating
9 questions, what was he doing that night around
10 the Versailles Apartments. Pure coincidence?

11 MR. GEOLY: His statement, if we get into
12 that, I wasn't able to get from the agents when
13 they questioned him where he was. He said he
14 was over there not knowing what went on.

15 It's my suspicion they never saw him there.

16 THE COURT: I don't intend to retry the
17 case. But let him start naming names and turning
18 them over to the United States Attorney for
19 investigation. Let him turn the names over of
20 everybody he gave the car to. They will investigate
21 it.

22 Won't you, Ms. Fields?

23 MS. FIELDS: Yes, your Honor.

24 THE COURT: Let him turn it over. Or he
25 doesn't want to do that?

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2 MR. GEOLY: He will give the name of every-
3 body he gave the car to on the job. And the
4 only one who can do this is D'Agostino.

5 THE COURT: Had he given one name to the
6 United States Attorney to date?

7 MR. GEOLY: They wouldn't sit down and talk
8 to them.

9 THE COURT: Name the names now, everyone
10 you gave the car to.

11 THE DEFENDANT: Robert Morrow (phonetic
12 spelling).

13 THE COURT: Go ahead.

14 THE DEFENDANT: James McPadden.

15 THE COURT: Go ahead.

16 THE DEFENDANT: James Verga.

17 THE COURT: Go ahead.

18 MR. GEOLY: Richie said he used your car.

19 THE DEFENDANT: Richard Pachuta.

20 THE COURT: Go ahead.

21 THE DEFENDANT: Salvatore D'Agostino, and
22 including my boss at one time, who used the car.

23 THE COURT: It couldn't be Salvatore
24 D'Agostino, because he was already there.

25 THE DEFENDANT: Your Honor, that's an uncle.

1
2 THE COURT: Why don't you bring them in and
3 say they are suspects in this case, and you would
4 like to know when they took the car and see if
5 anyone says they did take the car. And ask them
6 when and on what occasions.

7 MR. GEOLY: Judge, all these people, for
8 my knowledge of this case, would not be anyone.
9 From what I can see here, it's somebody who took
10 the keys to his car and used it.

11 THE COURT: How do you know that?

12 MR. GEOLY: I have a feeling.

13 THE COURT: Well, that's your feeling.

14 My feeling is the man is guilty as hell.

15 MR. GEOLY: If there is any test, your Honor--

16 THE COURT: There is the test of the jury.
17 And they found him guilty.

18 A gentleman is here from probation and he
19 will take a full statement on his background, and
20 so forth. And he will fix the date of sentence
21 and let you know.

22 MR. GEOLY: Bail continued, your Honor?

23 THE COURT: I beg your pardon?

24 MR. GEOLY: May I have bail continued, Judge?

25 THE COURT: What is the bail?

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2 MS. FIELDS: I believe it's a \$1,000 cash
3 bond.

4 MR. GEOLY: I think so.

5 THE COURT: He has \$1,000 cash put up?

6 MS. FIELDS: Yes, your Honor.

7 THE COURT: That means money, currency put
8 up?

9 MS. FIELDS: Yes, your Honor.

10 THE COURT: Any question about that?

11 MS. FIELDS: No, your Honor.

12 THE COURT: You may continue under the same
13 bail and terms and conditions as previously fixed.
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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK
-----X

3 UNITED STATES OF AMERICA, :

4 -against- :

77-CR-129-1

5 SALVATORE MOGAVERO, :

6 Defendant. :

7 UNITED STATES OF AMERICA, :

8 -against- :

77-CR-129-4

9 PETER D'AGOSTINO, :

10 Defendant. :

11 UNITED STATES OF AMERICA, :

12 -against- :

77-CR-129-3

13 RICHARD CAPONE, :

14 Defendant. :

15 -----X
16 United States Courthouse
17 Brooklyn, New York

18 August 19, 1977
19 10:00 o'clock A.M.

20 B e f o r e :

21 HONORABLE JACOB MISHLER, CHIEF U.S.D.J.

22
23
24 MAURICE S. DAVIS
25 ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: RHONDA FIELDS, ESQ.
Assistant U.S. Attorney

FRANK GEOLY, ESQ.
Attorney for Defendant MOGAVERO

SIDNEY J. GURAN, ESQ.
Attorney for Defendant D'AGOSTINO

JEFFREY RABIN, ESQ.
Attorney for Defendant CAPONE

P R O C E E D I N G S

THE CLERK: The criminal cause for sentence,
United States of America v. Richard Capone.

THE COURT: Mr. Evseroff; Richard Capone?
Jeffrey Rabin, from Mr. Evseroff's office.

THE COURT: Let me see how many of the others
are present.

Peter D'Agostino; Salvatore Mogavero?

MS. FIELDS: His attorney was here, your Honor.

MR. GURAN: I believe Mr. Geoly is in the hall.

THE COURT: Salvatore Mogavero -- I am going
to conduct simultaneous sentencing because as I ex-
plained in the past, under similar situations I find
if I sentence one and he is all through, there is a
tendency to fix the blame on the one I just sentenced.
So experience has taught me, if I have it all together
if anyone points a finger, they can do it before I
pass sentence.

First, Mr. Mogavera -- Salvatore Mogavera, do
you have anything to say before the Court imposes
sentence upon you?

MR. MOGAVERA: What I would like to say, I
expressed my innocence from the beginning and certain
things I heard during the trial, for instance, like
the man had a beard, and I brought people that were

1 with me that entire day -- I don't understand how I
2 was found guilty. Other than that --

3 THE COURT: The jury did that. I didn't do
4 that.

5 MR. MOGAVERO: I realize that, your Honor.

6 THE COURT: I must assume you are guilty.

7 Now, at one point during the trial, either
8 Mr. Geoly, or someone else indicated that other
9 people had access to the car and therefore the infer-
10 ence was that one of those other persons was the
11 person that entered that parking lot and that it
12 wasn't you, and so I wrote Mr. Geoly's organization
13 -- or I asked Ms. Fields to write Mr. Geoly a letter
14 and ask him to cooperate and seek out the individual
15 who was there. What was done on that, Mr. Geoly?

16 MR. GEOLY: If your Honor please, the U.S.
17 Attorney sent me a letter requesting the name of the
18 people who possibly used that car. We had, during the
19 trial, the witnesses that had testified, some of them
20 themselves used the car.

21 THE COURT: How about on that particular night,
22 at that particular time?

23 MR. GEOLY: During the trial, the defendant
24 didn't know. He wasn't arrested on November 4th. He
25 was arrested in February and it was our position --

1 our contention was misunderstood in that fact.

2 That fact was brought up to show that so many
3 people had used his car that the availability of that
4 car for anyone to have -- to use it on other occasions,
5 to know that that car was being used. The defendant
6 couldn't point a finger to anyone on that day. We
7 never did.

8 THE COURT: Maybe you could have brought these
9 people in and maybe they would have admitted that at
10 certain times they had the car; how they had the car;
11 when they got the key to the car; when it was available
12 to you.

13 MR. GEOLY: Two of the witnesses admitted that
14 during the job, they used the car.

15 THE COURT: That was to drive back and forth
16 to work and I want to know who used the car that
17 particular night, if it wasn't this particular defend-
18 ant.

19 MR. GEOLY: We don't know.

20 THE COURT: Well, I'm convinced it was this
21 defendant.

22 MR. GEOLY: We offered to take any scientific
23 test that could dispute that. Apparently there is
24 nothing we can do, but if the defendant had any recol-
25 lection who borrowed his car, it was our contention

1 that nobody borrowed it and knowing that this car
2 was available, they could have taken it without his
3 knowledge.

4 The testimony was that the car was parked
5 back on Dahill Street where the defendant lived. He
6 wasn't arrested until months later.

7 That car could have been used without his
8 knowledge.

9 THE COURT: On the theory that everything is
10 possible, that too could have happened.

11 MR. GEOLY: If the Government had gone there
12 and surveilled the car from the time they saw those
13 things, until somebody came back in that car, we
14 wouldn't have any questions left open. There is no
15 surveillance from November 3rd to the date the defend-
16 ant was arrested as to this defendant.

17 THE COURT: Would you like to say anything else
18 about the issue of sentencing?

19 MR. GEOLY: The jury has determined the
20 defendant is guilty and your Honor must sentence the
21 defendant as a guilty person.

22 I would say, look at the defendant's previous
23 record, he is 37 going on 38, there is nothing in his
24 background, no associations which would corroborate
25 any type of a crime -- this defendant leaning towards

1 crime. His whole background after the Probation
2 Department goes way back for many, many years.

3 As to his work record, this is a man who has
4 always worked. He is not the type of person who
5 bummed out around in the street.

6 I think there were letters sent by various
7 people in the community. I myself have spoken to
8 some of them.

9 Of course, naturally, the people weren't there.
10 They don't know as to the facts of the crime but as
11 to the general background and his reputation in the
12 community for all these 38 years is excellent.

13 Here is a man who is a perfect family man.
14 The biggest things in life was running down to Coney
15 Island. He has three children.

16 There is nothing to show that this man hangs
17 around with bad people or bars. I would ask your
18 Honor to sentence him as a first offender, who has
19 committed a crime out of insanity because I would say
20 that it would have to be the case.

21 It's a complete reversal of character and form.

22 I would ask your Honor not to judge him as
23 to this one act and take his whole life, the whole
24 span of his existence into consideration. He has very
25 close family ties. He lives with his wife. He lives

1 with his mother. He lives with his sister. He has
2 always lived in that community.

3 I would ask your Honor to be as merciful as
4 possible under these circumstances.

5 THE COURT: Peter D'Agostino?

6 MR. D'AGOSTINO: Yes, your Honor.

7 THE COURT: Do you have anything to say before
8 the Court imposes sentence upon you?

9 MR. D'AGOSTINO: Yes, I do.

10 I was - I admitted to the charge and everything.
11 I have admitted to the charge that was presented
12 against me --

13 THE COURT: You weren't ready to testify.

14 MR. D'AGOSTINO: Excuse me?

15 THE COURT: You aren't ready to testify. That
16 was one of the deals you had?

17 MR. GURAN: Your Honor, we had no deal. The
18 District Attorney asked me if Mr. D'Agostino would
19 testify. He and I discussed it and he felt that he
20 could add nothing to the District Attorney's case and
21 there would be no point in his testifying.

22 THE COURT: You say he could not add to the
23 District Attorney's case?

24 MR. GURAN: Nothing of which I am aware.

25 THE COURT: He admits to prior sales of

1 barbiturates, totalling 10,000 pills. He reports
2 purchasing the barbiturates from to unidentified
3 sources.

4 You mean to say he didn't know who he bought
5 the 10,000 pills from?

6 MR. GURAN: To the best of my knowledge and
7 belief, at this point, he does not know who the
8 prime source of supply was.

9 THE COURT: Yes? Is there anything else you
10 would like to say?

11 MR. GURAN: Yes, your Honor.

12 First, --

13 THE COURT: Did I give you the opportunity to
14 say anything else, Mr. D'Agostino?

15 MR. D'AGOSTINO: I just wanted to say that
16 since the offense and everything, I've --

17 THE COURT: You don't know who you bought the
18 pills from?

19 MR. D'AGOSTINO: It was like a middle man thing.

20 THE COURT: You don't know who he was, do you?

21 MR. D'AGOSTINO: I know, your Honor, but like I
22 told the parole officer, it's the kind of thing -- it
23 would jeopardize --

24 THE COURT: You don't want to get somebody
25 else in trouble?

1 MR. D'AGOSTINO: It would jeopardize my family.
2 I told him I made a mistake. I got involved with the
3 wrong people and I pleaded guilty and I am looking to
4 do the right thing now.

5 I opened a clothing store in Newport, Rhode
6 Island.

7 I am in a different environment of people.
8 The store is very successful and it's just a whole
9 new way of life and I am looking to change everything.

10 I don't ever want to be in this situation
11 again. Believe me.

12 THE COURT: Mr. Guran, do you have anything
13 else to say?

14 MR. GURAN: I believe that this young man is
15 entitled to be treated as a young adult under Section
16 4209, under the Code. He has no prior involvement.

17 His date of birth is September 28, 1952 and I
18 therefore respectfully ask the Court to remove the
19 judgment of conviction and have him treated as a
20 young adult.

21 THE COURT: You see this, Mr. Guran? I under-
22 scored in red that I did not give him a young adult
23 offender --

24 MR. GURAN: I did not see that. I saw the
25 probation officer report in the office.

1 THE COURT: I don't see where I have to do that.
2 If the statutory penalty is lesser than the 5010B
3 sentence, then I must advise him, but what you are
4 asking for is a withdrawal of a plea; aren't you?

5 MR. GURAN: I am asking to vacate the plea
6 under that section.

7 THE COURT: And go to trial?

8 MR. GURAN: Not to go to trial; to vacate the
9 plea and have him treated as a young adult. Your
10 Honor has decided not to do that.

11 THE COURT: I don't think you understand or
12 I don't understand you.

13 I can't treat him as a young adult under this
14 plea. That's my position, because as I say, a five
15 year maximum plus a minimum special parole term of
16 two years exceeds the sentence under 5010B.

17 MR. GURAN: I'm sorry, your Honor, I did not
18 understand you.

19 Judge, I read this --

20 THE COURT: You are not asking that the plea
21 be withdrawn?

22 MR. GURAN: No, I am not, Sir.

23 Judge, I read the probation report and I don't
24 disagree with any of its findings, except its conclu-
25 sion.

1
2 You see, the probation officer himself is under
3 a handicap under which I don't suffer. I know this
4 defendant. He has cursory contact with him. I have
5 known this young man since he was ten years old. I
6 know his parents, his grandparents.

7 I visited at his home. He and his parents
8 have visited at mine and some of his family.

9 I know that during this short period of time,
10 less than a year during which he was involved, he was
11 involved with a group of people who apparently were
12 the people who opened to him an opportunity to make
13 a lot of money.

14 Now, he stupidly got involved. He regrets it.
15 He has now rearranged his life.

16 I would say to this Court that there is no
17 question in my mind but that in the event your Honor
18 sentences him to probation, that he would never be
19 back, involved with the law. I would also respect-
20 fully request that your Honor, if you decide that you
21 are going to incarcerate this youngster, that he be
22 incarcerated under the terms of Section 4208B, that
23 your Honor may have an opportunity to re-evaluate his
24 performance in three months.

25 You see, I disagree --

1 THE COURT: 4208B?

2 MR. GURAN: Yes, Sir.

3 THE COURT: The section has been superceded by
4 4205C. You are talking about an examination report?

5 MR. GURAN: Yes.

6 THE COURT: I see nothing in this defendant's
7 history that warrants sending him away for a psychiatric
8 report.

9 MR. GURAN: Your Honor, it would appear to me
10 that a young man who is so tempted and so open to
11 suggestion by others, that he got himself involved
12 in what is obviously a situation foreign to his entire
13 background and training, perhaps at that moment was
14 not thinking as he should have been and I believe if
15 your Honor should decide that you want to give him an
16 opportunity to prove to this Court that he is not going
17 to be involved again --

18 THE COURT: What is so foreign to this gentle-
19 man's upbringing and culture? I understood that it was
20 part of it these days; ups and downs among young men.
21 What's so foreign about it. I'm not surprised to
22 find young men --

23 MR. GURAN: He was a disc jockey; music. In
24 that business, it is not foreign. He is no longer in
25 that business, Judge Mishler.

1 MR. S'AGOSTINO: That's why I got out of the
2 business. That was the reason.

3 MR. GURAN: As I told your Honor, I disagree
4 with the conclusion of the report, only to the extent
5 that, yes, he was involved in it for a short time,
6 to make some money, and unfortunately he didn't get
7 out quickly enough. He regrets it. He apologizes to
8 this Court for his involvement.

9 I am certain, if your Honor gives him some
10 degree of clemency, he will not be involved with the
11 law again, here or anywhere else.

12 THE COURT: All right, Mr. Richard Capone,
13 do you have anything to say before the Court imposes
14 sentence on you?

15 MR. CAPONE: Just that I'm sorry, your Honor,
16 for being stupid enough to be involved in anything
17 having to do with this. I should have known better
18 than to be involved with anything like this.

19 I wasn't around it before and out of not
20 working, I wound up getting myself in trouble.

21 THE COURT: You are Mr. Rubin?

22 MR. RABIN: Rabin; yes, Judge.

23 THE COURT: Do you have anything further to
24 say?

25 MR. RABIN: If I may, I had an opportunity to

1 review the pre-sentence report that was written on
2 Mr. Capone.

3 Basically, the pre-sentence report sets forth
4 whatever involvement he had in this and it is very
5 accurate as far as the involvement and Mr. Capone's
6 background.

7 As the report indicates, he has just one prior
8 conviction in Manhattan for a misdemeanor. I believe
9 that was promoting gambling and possession of gambling
10 records.

11 The report is accurate in that it states that
12 he was one of two individuals who were on the fringes
13 of this and are the least culpable. As the report
14 indicates, he was merely -- merely drove an automobile
15 the first time around, and had a conversation with an
16 agent later on, and as it indicates, Mr. Capone is
17 somewhat of an opportunist and was seeking to take
18 advantage of a situation, but as it does indicate,
19 he is the type of individual who didn't know where to
20 turn and didn't know where to go and really couldn't
21 do anything.

22 The report also indicates that he is the type
23 of individual who can use some form of counseling
24 because of his propensity for gambling and because
25 of his prior employment record.

1 He does have a family. He is the father of
2 two children, one from his wife's prior marriage,
3 which was an adopted child, and one from his present
4 marriage.

5 He, at the present time, which the probation
6 report dr indicate, because he didn't have it,
7 he has a . ng job which is with the Club House
8 Restaurant in Manhattan. That is supposed to commence
9 at the beginning of September. He is scheduled to be-
10 come maitre de at that restaurant.

11 He is seeking to straighten himself out. Judge.
12 He is seeking to stay with his family and continue
13 them as a group. He wants to be with them and be with
14 his children.

15 I am sure the United States Attorney cannot
16 indicate any knowledge of prior involvement on his
17 part, as the report indicates. It is true that he
18 fell into an unfortunate situation. He was not a
19 negotiator. He was not a seller. He was not a
20 possessor.

21 He unfortunately aided, in a peripheral sense.

22 I would ask, because of his prior record and
23 everything the report shows about him, because of his
24 sort of limited involvement in this matter, that he
25 be given as much consideration as possible in this.

1 THE COURT: Salvatore Mogavero, the jury having
2 found you guilty of the charges in counts one and
3 four of the indictment, I sentence you to the custody
4 of the Attorney General of the United States or his
5 duly authorized representative, who shall choose a
6 place of confinement, for a term of two years and in
7 addition thereto, I impose a special parole term of
8 three years on each count, said counts to run concurrent-
9 ly.

10 Having imposed sentence, I must advise you as
11 to your constitutional right to appeal. You have a
12 constitutional right to appeal. You must file a
13 notice of appeal within ten days from the date that
14 the judgment and commitment is filed and, in all
15 probability, the judgment and commitment will be filed
16 today.

17 If you cannot afford the services of an attorney,
18 the Court of Appeals will appoint counsel to prosecute
19 the appeal and pay for all the expenses.

20 If you wish, I will direct the Clerk to file a
21 notice of appeal forthwith.

22 Now, what are your finances like? Can you
23 afford an appeal?

24 MR. MOGAVERO: I have to go to relatives for
25 the money.

THE COURT: The Court doesn't require you to

1 go to relatives. If you fill out a form with
2 Mr. Geoly, and I find you are entitled to the benefits
3 of the Criminal Justice Act, in all likelihood, the
4 Court of Appeals will appoint Mr. Geoly to represent
5 you on this matter on appeal and we will pay the cost
6 of appeal.

7 So, if you are willing, there is the form and
8 I will wait until you are through with the form.

9 Now, Peter D'Agostino, I have considered the
10 Correction Act treatment and under Section 4209,
11 young adult treatment, but I've decided not to
12 sentence you under those sections.

13 Peter D'Agostino, in your plea of guilty to
14 count one of the indictment, I sentence you to the
15 custody of the Attorney General of the United States
16 or his duly authorized representative, who shall
17 choose a place of confinement, for a term of three
18 months and in addition thereto, I impose a special
19 parole term of three years.

20 Is there a motipn?

21 MS. FIELDS: Yes, your Honor. At this time,
22 the Government would move for the dismissal of counts
23 four and five of Indictment 77-CR-129 as against
24 Peter D'Agostino.

25 THE COURT: Motion granted. Counts four and

1 five dismissed.

2 Richard Capone, your plea of guilty to count
3 one of the indictment, I suspend the imposition of
4 sentence and place you on probation for a term of
5 two years.

6 The defendants will recognize from the sentences
7 that I found Mr. Mogliero was most culpable,
8 Mr. D'Agostino was next in line with respect to
9 culpability, and Mr. Capone was the least culpable.

10 I would suggest you take Mr. Rabin's advice
11 and get yourself a job -- not his advice, but your
12 advice to him as to what you will do. That might
13 keep you out of trouble. Just because you were in
14 the least degree of culpability, I have decided to
15 give you probation.

16 Is there a motion with reference to Mr. Capone?

17 MS. FIELDS: Yes, your Honor. The Government
18 would move for dismissal of counts two and three of
19 the indictment against Mr. Capone.

20 THE COURT: Motion granted.

21 MR. GURAN: Your Honor, may I respectfully
22 request that this young man be permitted to surrender
23 after Labor Day? He is involved now in this clothing
24 business which he has established in Rhode Island.
25 He has now a stock of some \$3700 there, which has a

1 retail value of approximately \$7,000. He has somebody
2 whom he can get to run the store while he serves the
3 sentence imposed by your Honor, after which he can
4 return to it, but he must -- he would like to be able
5 to return to Rhode Island and perhaps make all these
6 arrangements so that he can resume this business when
7 he is released from confinement.

8 THE COURT: I am willing to do it with the
9 distinct understanding that I will entertain no motions
10 to reduce or modify the sentences until after he
11 surrenders. I have found too often that it's a
12 gimmick to engage the sympathies of the Court, because
13 to say, because he has not been in custody, so
14 probate him now. I want to preclude that --

15 MR. GURAN: I will not make such an application
16 until -- if I am at all, until after he surrenders.

17 THE COURT: I have given all these sentences
18 a lot of thought. They were thoroughly discussed by
19 the other judges and myself, in the Sentencing Panel,
20 and without disclosing what the others would have
21 recommended, you would probably have been taken back
22 about how serious an offense the other judges thought
23 it would be.

24 I don't intend treating defendants with kid
25 gloves, but we are going to make every effort to

1 eliminate the drug scene if we can. Without disclos-
2 ing the others, I might tell you, without identifying
3 the others, that one judge thought you ought to get
4 three years and three years special parole term.

5 The other Judge thought you get 5010B and
6 similarly in degree, the other judges felt the same
7 about the other two.

8 They would have treated Mr. Mogavero more
9 severely and they wouldn't have treated Mr. Capone
10 with the degree of consideration that I did, though
11 one would have probated him on the condition that he
12 get a job within 60 days. The other would have sent
13 him to jail.

14 MS. FIELDS: Excuse me, your Honor. What was
15 the surrender date for Mr. D'Agostino?

16 THE COURT: After Labor Day, and after Labor
17 Day to me is the 6th, as I recall it.

18 MR. GURAN: September the 6th is Tuesday, the
19 day after Labor Day, your Honor.

20 THE COURT: If you want a few more days, you
21 can have it.

22 MR. GURAN: May we have then until the 8th
23 or 9th of that week?

24 THE COURT: Execution stayed until Friday,
25 September 9th, at or before 4:00 o'clock P.M.

1 Now, Mr. Mogavero, do I understand that you
2 are unemployed?

3 MR. GEOLY: At this point, yes, your Honor.

4 THE COURT: Are you married?

5 MR. GEOLY: Yes, your Honor. He has three
6 children.

7 THE COURT: Your wife is not employed?

8 MR. GEOLY: No.

9 THE COURT: All right, I find the defendant
10 is entitled to the benefit of the Criminal Justice
11 Act. Have the minutes been transcribed?

12 MS. FIELDS: Not yet, your Honor.

13 THE COURT: In all probability, you will be
14 appointed by the Court of Appeals, but until appoint-
15 ment, you must continue to represent the defendant.
16 You understand that?

17 MR. GEOLY: Yes, your Honor. I filled out the
18 notice of appeal.

19 THE COURT: Do you want the Clerk to file the
20 notice of appeal forthwith?

21 MR. GEOLY: Yes, your Honor. I handed it in
22 with the papers.

23 THE COURT: All right, the Clerk is directed
24 to file a notice of appeal without fee.

25 MR. GEOLY: Judge, may we have the defendant

1 continued on bail, pending the appeal?

23

2 THE COURT: As soon as I complete this file.

3 You will notify whoever the reporter was,
4 Mr. Davis, that the minutes of the trial must be
5 transcribed for Appellate purposes.

6 What are the bail conditions?

7 MR. GEOLY: He is out on \$8,000 cash bail; a
8 thousand or fifteen hundred.

9 Judge, with the roots in the community estab-
10 lished --

11 THE COURT: I just want to know what the bail
12 is. \$8,000 cash bail doesn't mean anything to me.
13 It would be a 10,000 personal appearance bond secured
14 by cash.

15 MS. FIELDS: That's what it is, your Honor.

16 THE COURT: All right, the defendant may con-
17 tinue on bail on the amount and conditions previously
18 fixed.

19 (Thereupon the above proceeding terminated.)

20
21 * * * * *

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GREENBERG

AFFIDAVIT OF PERSONAL SERVICE

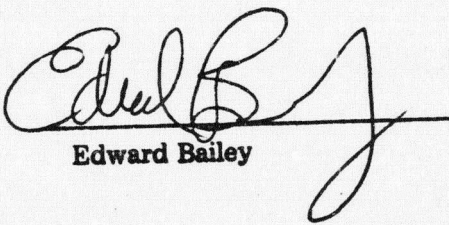
STATE OF NEW YORK
COUNTY OF RICHMOND ss.:

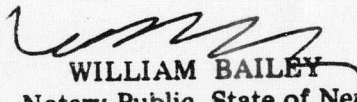
EDWARD BAILEY being duly sworn, deposes and says, that
deponent is not a party to the action, is over 18 years of age
and resides at 286 Richmond Avenue, Staten Island, N.Y.
10302. That on the 16 day of Nov. ,1977 at
No. 225 Eadman Plaza East. Brooklyn, NY

deponent served the within *Appel.*
upon U.S. Atty. ,East. Dist. of NY

the Appellee herein, by delivering /true
copy(ies) thereof to him personally. Deponent knew the person so
served to be the person mentioned and described in said papers as the
Appellee therein.

Sworn to before me this
16 day of Nov. 1977.


Edward Bailey


WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978